

AMENDED IN SENATE AUGUST 10, 1998

AMENDED IN SENATE JULY 15, 1998

AMENDED IN SENATE JULY 6, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 2292

Introduced by Assembly Member Ackerman

February 19, 1998

~~An act to amend Sections 160, 168, 174.5, 175, 181, 301.5, 1001, 1100, 1101, 1101.1, 1113, 1200, 1201, 2115, 6010, 6020, 6021, 6022, 8010, 8020, 8021, 8022, 9640, 12530, 15679.1, 16101, 16901, 16905, 16911, 16914, 16915, 16916, and 17600 of, to add Sections 6019.1, 8019.1, and 12540.1 to, to add Article 7.4 (commencing with Section 15677.1) to Chapter 3 of Title 2 of, and to add Chapter 11.5 (commencing with Section 17540.1) to Title 2.5 of, the An act to amend Sections 301.5 and 2115 of the Corporations Code, and to amend Section 29 of Chapter 57 of the Statutes of 1996, relating to legal entities.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2292, as amended, Ackerman. Legal entities: organization and operation.

~~Existing provisions of law provide for the merger of 2 or more corporations.~~

~~This bill would authorize corporations, including nonprofit corporations and cooperative corporations, to merge directly with any other business entity defined to mean a domestic or foreign limited liability company, limited partnership,~~

~~general partnership, business trust, real estate investment trust, unincorporated association, other than a nonprofit association, or a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance. The bill would revise and recast other provisions, would enact related provisions with respect to merger authority that are applicable to partnerships, limited partnerships, and limited liability companies, and would make various technical and other related changes.~~

Existing law authorizes a listed corporation, as defined, to amend its articles or bylaws to divide its board of directors into 2 or 3 classes to serve for terms of 2 or 3 years, respectively, or to eliminate cumulative voting, or to do both of those things. Existing law also authorizes a corporation that is not a listed corporation, after the issuance of shares, to amend its articles or bylaws, to be effective when the corporation becomes a listed corporation, to divide its board of directors into 2 or 3 classes to serve for terms of 2 or 3 years, respectively, or to eliminate cumulative voting, or to do both of those things.

This bill would, among other things, provide for the elimination of those classes of directors, as specified, when the listed corporation ceases to be a listed corporation. It would also authorize shareholders of a corporation that ceases to be a listed corporation to cumulate their votes at any election of directors occurring while that corporation is not a listed corporation, notwithstanding any provision to the contrary in the corporation's articles or bylaws. This bill would also specify certain related effective dates governing when a listed corporation ceases to be a listed corporation and when a corporation that is not a listed corporation becomes a listed corporation. It would also make a change to the definition of "listed corporation."

~~Existing law governs the establishment, operation, reorganization, and dissolution of various forms of business organizations, including partnerships, limited partnerships, and limited liability companies.~~

~~This bill would enact provisions governing the conversion of a limited partnership into a domestic partnership or limited liability company, or a foreign other business entity, and provisions governing the conversion of a limited liability~~



~~company into a domestic partnership or limited partnership, or a foreign other business entity, as specified.~~

Existing law provides that it is the intent of the Legislature that existing business entities, such as partnerships and corporations, be permitted to convert into or transfer real property to, limited liability companies without incurring a documentary transfer tax provided that the direct or indirect proportionate interests in the property remain the same.

This bill would amend that provision to provide that existing business entities, such as partnerships and corporations, shall be permitted to convert into or transfer real property to, limited liability companies without incurring a documentary transfer tax ~~or a change in ownership for purposes of property taxes~~, provided that the direct or indirect proportionate interests in the property remain the same.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 160 of the Corporations Code is~~
- 2 ~~amended to read:~~
- 3 ~~160. (a) Except as provided in subdivision (b),~~
- 4 ~~“control” means the possession, direct or indirect, of the~~
- 5 ~~power to direct or cause the direction of the management~~
- 6 ~~and policies of a corporation.~~
- 7 ~~(b) “Control” in Sections 160, 175, 181, 1001 and 1200~~
- 8 ~~means the ownership directly or indirectly of shares or~~
- 9 ~~equity securities possessing more than 50 percent of the~~
- 10 ~~voting power of a domestic corporation, a foreign~~
- 11 ~~corporation, or an other business entity.~~
- 12 ~~SEC. 2. Section 168 of the Corporations Code is~~
- 13 ~~amended to read:~~
- 14 ~~168. “Equity security” in Sections 181, 1001, 1113,~~
- 15 ~~1200, and 1201 means any share or membership of a~~
- 16 ~~corporation, domestic or foreign; any partnership~~
- 17 ~~interest, membership interest, or equivalent equity~~
- 18 ~~interest in an other business entity; and any security~~
- 19 ~~convertible with or without consideration into, or any~~

~~warrant or right to subscribe to or purchase, any of the foregoing.~~

~~SEC. 3. Section 174.5 of the Corporations Code is amended to read:~~

~~174.5. "Other business entity" means a limited liability company, limited partnership, general partnership, business trust, real estate investment trust, unincorporated association (other than a nonprofit association), in each case, domestic or foreign, or a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance as set forth in Article 16 (commencing with Section 1550) of Chapter 3 of Part 2 of Division 1 of the Insurance Code. As used herein, "general partnership" means a "partnership" as defined in Section 16101; "business trust" means a business organization formed as a trust; "real estate investment trust" means a "real estate investment trust" as defined in Section 856(a) of the Internal Revenue Code of 1986, as amended from time to time; and "unincorporated association" has the meaning set forth in Section 24000.~~

~~SEC. 4. Section 175 of the Corporations Code is amended to read:~~

~~175. Except as used in Sections 1001, 1101, and 1113, a "parent" of a specified corporation is an affiliate in control (subdivision (b) of Section 160) of that corporation directly or indirectly through one or more intermediaries. In Sections 1001, 1101, and 1113, "parent" means a person in control (Section 160(b)) of a domestic corporation, a foreign corporation or an other business entity.~~

~~SEC. 5. Section 181 of the Corporations Code is amended to read:~~

~~181. "Reorganization" means either:~~

~~(a) A merger pursuant to Chapter 11 (commencing with Section 1100) other than a short-form merger (a "merger reorganization").~~

~~(b) The acquisition by one domestic corporation, foreign corporation, or other business entity in exchange, in whole or in part, for its equity securities (or the equity~~

1 securities of a domestic corporation, a foreign
2 corporation, or another business entity which is in control
3 of the acquiring entity) of equity securities of another
4 domestic corporation, foreign corporation, or other
5 business entity if, immediately after the acquisition, the
6 acquiring entity has control of the other entity (an
7 “exchange reorganization”).

8 (c) The acquisition by one domestic corporation,
9 foreign corporation, or other business entity in exchange,
10 in whole or in part, for its equity securities (or the equity
11 securities of a domestic corporation, foreign corporation,
12 or other business entity which is in control of the
13 acquiring entity) or for its debt securities (or debt
14 securities of a domestic corporation, foreign corporation,
15 or other business entity which is in control of the
16 acquiring entity) which are not adequately secured and
17 which have a maturity date in excess of five years after the
18 consummation of the reorganization, or both, of all or
19 substantially all of the assets of another domestic
20 corporation, foreign corporation or other business entity
21 (a “sale of assets reorganization”).

22 **SEC. 6.**

23 *SECTION 1.* Section 301.5 of the Corporations Code
24 is amended to read:

25 301.5. (a) A listed corporation may, by amendment
26 of its articles or bylaws, adopt provisions to divide the
27 board of directors into two or three classes to serve for
28 terms of two or three years respectively, or to eliminate
29 cumulative voting, or both. After the issuance of shares,
30 a corporation which is not a listed corporation may, by
31 amendment of its articles or bylaws, adopt provisions to
32 be effective when the corporation becomes a listed
33 corporation to divide the board of directors into two or
34 three classes to serve for terms of two or three years
35 respectively, or to eliminate cumulative voting, or both.
36 An article or bylaw amendment providing for division of
37 the board of directors into classes, or any change in the
38 number of classes, or the elimination of cumulative voting
39 may only be adopted by the approval of the board and the

1 outstanding shares (Section 152) voting as a single class,
2 notwithstanding Section 903.

3 (b) If the board of directors is divided into two classes
4 pursuant to subdivision (a), the authorized number of
5 directors shall be no less than six and one-half of the
6 directors or as close an approximation as possible shall be
7 elected at each annual meeting of shareholders. If the
8 board of directors is divided into three classes, the
9 authorized number of directors shall be no less than nine
10 and one-third of the directors or as close an
11 approximation as possible shall be elected at each annual
12 meeting of shareholders. Directors of a listed corporation
13 may be elected by classes at a meeting of shareholders at
14 which an amendment to the articles or bylaws described
15 in subdivision (a) is approved, but the extended terms for
16 directors are contingent on that approval, and in the case
17 of an amendment to the articles, the filing of any
18 necessary amendment to the articles pursuant to Section
19 905 or 910.

20 (c) If directors for more than one class are to be
21 elected by the shareholders at any one meeting of
22 shareholders and the election is by cumulative voting
23 pursuant to Section 708, votes may be cumulated only for
24 directors to be elected within each class.

25 (d) For purposes of this section, a “listed corporation”
26 means any of the following:

27 (1) A corporation with outstanding shares listed on the
28 New York Stock Exchange or the American Stock
29 Exchange.

30 (2) A corporation with outstanding securities
31 designated as qualified for trading on the NASDAQ
32 National Market of the NASDAQ Stock Market (or any
33 successor thereto).

34 (e) Subject to subdivision (h), if a listed corporation
35 having a board of directors divided into classes pursuant
36 to subdivision (a) ceases to be a listed corporation for any
37 reason, unless the articles of incorporation or bylaws of
38 the corporation provide for the elimination of classes of
39 directors at an earlier date or dates, the board of directors
40 of the corporation shall cease to be divided into classes as



1 to each class of directors on the date of the expiration of
2 the term of the directors in that class and the term of each
3 director serving at the time the corporation ceases to be
4 a listed corporation (and the term of each director
5 elected to fill a vacancy resulting from the death,
6 resignation, or removal of any of those directors) shall
7 continue until its expiration as if the corporation had not
8 ceased to be a listed corporation.

9 (f) Subject to subdivision (h), if a listed corporation
10 having a provision in its articles or bylaws eliminating
11 cumulative voting pursuant to subdivision (a) or
12 permitting noncumulative voting in the election of
13 directors pursuant to that subdivision ceases to be a listed
14 corporation for any reason, the shareholders shall be
15 entitled to cumulate their votes pursuant to Section 708
16 at any election of directors occurring while the
17 corporation is not a listed corporation notwithstanding
18 that provision in its articles of incorporation or bylaws.

19 (g) Subject to subdivision (i), if a corporation that is
20 not a listed corporation adopts amendments to its articles
21 of incorporation or bylaws to divide its board of directors
22 into classes or to eliminate cumulative voting, or both,
23 pursuant to subdivision (a) and then becomes a listed
24 corporation, unless the articles of incorporation or bylaws
25 provide for those provisions to become effective at some
26 other time and, in cases where classes of directors are
27 provided for, identify the directors who, or the
28 directorships that, are to be in each class or the method
29 by which those directors or directorships are to be
30 identified, the provisions shall become effective for the
31 next election of directors after the corporation becomes
32 a listed corporation at which all directors are to be
33 elected.

34 (h) If a corporation ceases to be a listed corporation on
35 or after the record date for a meeting of shareholders and
36 prior to the conclusion of the meeting, including the
37 conclusion of the meeting after an adjournment or
38 postponement that does not require or result in the
39 setting of a new record date, then, solely for purposes of
40 subdivisions (e) and (f), the corporation shall not be

1 deemed to have ceased to be a listed corporation until the
2 conclusion of the meeting of shareholders.

3 (i) If a corporation becomes a listed corporation on or
4 after the record date for a meeting of shareholders and
5 prior to the conclusion of the meeting, including the
6 conclusion of the meeting after an adjournment or
7 postponement that does not require or result in the
8 setting of a new record date, then, solely for purposes of
9 subdivision (g), the corporation shall not be deemed to
10 have become a listed corporation until the conclusion of
11 the meeting of shareholders.

12 (j) If an article amendment referred to in subdivision
13 (a) is adopted by a listed corporation, the certificate of
14 amendment shall include a statement of the facts showing
15 that the corporation is a listed corporation within the
16 meaning of subdivision (d). If an article or bylaw
17 amendment referred to in subdivision (a) is adopted by
18 a corporation which is not a listed corporation, the
19 provision, as adopted, shall include the following
20 statement or the substantial equivalent: "This provision
21 shall become effective only when the corporation
22 becomes a listed corporation within the meaning of
23 Section 301.5 of the Corporations Code."

24 ~~SEC. 7. Section 1001 of the Corporations Code is~~
25 ~~amended to read:~~

26 ~~1001. (a) A corporation may sell, lease, convey,~~
27 ~~exchange, transfer, or otherwise dispose of all or~~
28 ~~substantially all of its assets when the principal terms are~~
29 ~~approved by the board, and unless the transaction is in the~~
30 ~~usual and regular course of its business, approved by the~~
31 ~~outstanding shares (Section 152), either before or after~~
32 ~~approval by the board and before or after the transaction.~~

33 ~~A transaction constituting a reorganization (Section 181)~~
34 ~~is subject to the provisions of Chapter 12 (commencing~~
35 ~~with Section 1200) and not this section (other than~~
36 ~~subdivision (d)).~~

37 ~~(b) Notwithstanding approval of the outstanding~~
38 ~~shares (Section 152), the board may abandon the~~
39 ~~proposed transaction without further action by the~~

1 ~~shareholders, subject to the contractual rights, if any, of~~
2 ~~third parties.~~

3 ~~(e) The sale, lease, conveyance, exchange, transfer, or~~
4 ~~other disposition may be made upon those terms and~~
5 ~~conditions and for that consideration as the board may~~
6 ~~deem in the best interests of the corporation. The~~
7 ~~consideration may be money, securities, or other~~
8 ~~property.~~

9 ~~(d) If the acquiring party in a transaction pursuant to~~
10 ~~subdivision (a) of this section or subdivision (g) of Section~~
11 ~~2001 is in control of or under common control with the~~
12 ~~disposing corporation, the principal terms of the sale~~
13 ~~must be approved by at least 90 percent of the voting~~
14 ~~power of the disposing corporation unless the disposition~~
15 ~~is to a domestic or foreign corporation or other business~~
16 ~~entity in consideration of the nonredeemable common~~
17 ~~shares or nonredeemable equity securities of the~~
18 ~~acquiring party or its parent.~~

19 ~~(e) Subdivision (d) does not apply to any transaction~~
20 ~~if the Commissioner of Corporations, the Commissioner~~
21 ~~of Financial Institutions, the Insurance Commissioner or~~
22 ~~the Public Utilities Commission has approved the terms~~
23 ~~and conditions of the transaction and the fairness of those~~
24 ~~terms and conditions pursuant to Section 25142, Section~~
25 ~~696.5 of the Financial Code, Section 838.5 of the Insurance~~
26 ~~Code, or Section 822 of the Public Utilities Code.~~

27 ~~SEC. 8. Section 1100 of the Corporations Code is~~
28 ~~amended to read:~~

29 ~~1100. A corporation may merge with one or more~~
30 ~~domestic corporations (Section 167), foreign~~
31 ~~corporations (Section 171), or other business entities~~
32 ~~(Section 174.5) pursuant to this chapter. Mergers in~~
33 ~~which a foreign corporation but no other business entity~~
34 ~~is a constituent party are governed by Section 1108, and~~
35 ~~mergers in which an other business entity is a constituent~~
36 ~~party are governed by Section 1113.~~

37 ~~SEC. 9. Section 1101 of the Corporations Code is~~
38 ~~amended to read:~~

39 ~~1101. The board of each corporation which desires to~~
40 ~~merge shall approve an agreement of merger. The~~

1 constituent corporations shall be parties to the agreement
2 of merger and other persons, including a parent party
3 (Section 1200), may be parties to the agreement of
4 merger. The agreement shall state all of the following:

5 (a) The terms and conditions of the merger.

6 (b) The amendments, subject to Sections 900 and 907,
7 to the articles of the surviving corporation to be effected
8 by the merger, if any. If any amendment changes the
9 name of the surviving corporation the new name may be
10 the same as or similar to the name of a disappearing
11 domestic or foreign corporation, subject to subdivision
12 (b) of Section 201.

13 (c) The name and place of incorporation of each
14 constituent corporation and which of the constituent
15 corporations is the surviving corporation.

16 (d) The manner of converting the shares of each of the
17 constituent corporations into shares or other securities of
18 the surviving corporation and, if any shares of any of the
19 constituent corporations are not to be converted solely
20 into shares or other securities of the surviving
21 corporation, the cash, rights, securities, or other property
22 which the holders of those shares are to receive in
23 exchange for the shares, which cash, rights, securities, or
24 other property may be in addition to or in lieu of shares
25 or other securities of the surviving corporation, or that
26 the shares are canceled without consideration.

27 (e) Other details or provisions as are desired, if any,
28 including, without limitation, a provision for the payment
29 of cash in lieu of fractional shares or for any other
30 arrangement with respect thereto consistent with the
31 provisions of Section 407.

32 Each share of the same class or series of any constituent
33 corporation (other than the cancellation of shares held by
34 a constituent corporation or its parent or a wholly owned
35 subsidiary of either in another constituent corporation)
36 shall, unless all shareholders of the class or series consent
37 and except as provided in Section 407, be treated equally
38 with respect to any distribution of cash, rights, securities,
39 or other property. Notwithstanding subdivision (d),
40 except in a short form merger, and in the merger of a

1 corporation into its subsidiary in which it owns at least 90
2 percent of the outstanding shares of each class, the
3 nonredeemable common shares of a constituent
4 corporation may be converted only into nonredeemable
5 common shares of the surviving corporation or a parent
6 party if a constituent corporation or its parent owns,
7 directly or indirectly, shares of another constituent
8 corporation representing more than 50 percent of the
9 voting power of the other constituent corporation prior
10 to the merger, unless all of the shareholders of the class
11 consent and except as provided in Section 407.

12 SEC. 10. Section 1101.1 of the Corporations Code is
13 amended to read:

14 1101.1. Subdivision (c) of Section 1113 and the last
15 two sentences of Section 1101 do not apply to any
16 transaction if the Commissioner of Corporations, the
17 Commissioner of Financial Institutions, the Insurance
18 Commissioner, or the Public Utilities Commission has
19 approved the terms and conditions of the transaction and
20 the fairness of those terms and conditions pursuant to
21 Section 25142 or Section 696.5, 5750, or 5802 of the
22 Financial Code, Section 838.5 of the Insurance Code, or
23 Section 822 of the Public Utilities Code.

24 SEC. 11. Section 1113 of the Corporations Code is
25 amended to read:

26 1113. (a) Any one or more corporations may merge
27 with one or more other business entities (Section 174.5).
28 One or more domestic corporations (Section 167) not
29 organized under this division and one or more foreign
30 corporations (Section 171) may be parties to the merger.
31 Notwithstanding the provisions of this section, such a
32 merger may be effected only if:

33 (1) In a merger in which a domestic corporation not
34 organized under this division or a domestic other business
35 entity is a party, it is authorized by the laws under which
36 it is organized to effect the merger.

37 (2) In a merger in which a foreign corporation is a
38 party, it is authorized by the laws under which it is
39 organized to effect that merger.

~~(3) In a merger in which a foreign party is the surviving other business entity, the laws of the jurisdiction under which it is organized authorize the merger.~~

~~(4) In a merger in which a foreign party is a disappearing other business entity, it is not prohibited by the laws under which it is organized from effecting that merger.~~

~~(b) Each corporation and each other party which desires to merge shall approve, and shall be a party to, an agreement of merger. Other persons, including a parent party (Section 1200), may be parties to the agreement of merger. The board of each corporation which desires to merge, and, if required, the shareholders, shall approve the agreement of merger. The agreement of merger shall be approved on behalf of each party by those persons required to approve the merger by the laws under which it is organized. The agreement of merger shall state:~~

~~(1) The terms and conditions of the merger.~~

~~(2) The name and place of incorporation or organization of each party.~~

~~(3) The amendments, if any, subject to Sections 900 and 907, to the articles of the surviving corporation, if applicable, to be effected by the merger. If any amendment changes the name of the surviving corporation, if applicable, the new name may be subject to subdivision (b) of Section 201, the same as or similar to the name of a disappearing party to the merger.~~

~~(4) The manner of converting the shares of each constituent corporation into shares, interests or other securities of the surviving party. If any shares of any constituent corporation are not to be converted solely into shares, interests or other securities of the surviving party, the agreement of merger shall state (A) the cash, rights, securities, or other property which the holders of those shares are to receive in exchange for the shares, which cash, rights, securities, or other property may be in addition to or in lieu of shares, interests, or other securities of the surviving party, or (B) that the shares are canceled without consideration.~~

1 ~~(5) Any other details or provisions required by the~~
2 ~~laws under which any party to the merger is organized,~~
3 ~~including, if a public benefit corporation or a religious~~
4 ~~corporation is a party to the merger, Section 6019.1, or, if~~
5 ~~a mutual benefit corporation is a party to the merger,~~
6 ~~Section 8019.1, or, if a consumer cooperative corporation~~
7 ~~is a party to the merger, Section 12540.1, or if a domestic~~
8 ~~limited partnership is a party to the merger, Section~~
9 ~~15678.2, or if a domestic partnership is a party to the~~
10 ~~merger, Section 16911 or, if a domestic limited liability~~
11 ~~company is a party to the merger, Section 17551.~~

12 ~~(6) Any other details or provisions as are desired,~~
13 ~~including, without limitation, a provision for the payment~~
14 ~~of cash in lieu of fractional shares or for any other~~
15 ~~arrangement with respect thereto consistent with the~~
16 ~~provisions of Section 407.~~

17 ~~(c) Each share of the same class or series of any~~
18 ~~constituent corporation (other than the cancellation of~~
19 ~~shares owned, directly or indirectly, by a party to the~~
20 ~~merger or its parent or a wholly owned subsidiary of~~
21 ~~either in another constituent corporation) shall, unless all~~
22 ~~shareholders of the class or series consent and except as~~
23 ~~provided in Section 407, be treated equally with respect~~
24 ~~to any distribution of cash, rights, securities, or other~~
25 ~~property. Notwithstanding paragraph (4) of subdivision~~
26 ~~(b), the nonredeemable common shares of a constituent~~
27 ~~corporation may be converted only into nonredeemable~~
28 ~~common shares of a surviving corporation or a parent~~
29 ~~party (Section 1200) or nonredeemable equity securities~~
30 ~~of a surviving party other than a corporation if a party to~~
31 ~~the merger or its parent owns, directly or indirectly, prior~~
32 ~~to the merger shares of that constituent corporation~~
33 ~~representing more than 50 percent of the voting power~~
34 ~~of the other constituent corporation or equity interests of~~
35 ~~another constituent other business entity representing~~
36 ~~more than 50 percent of the entity interests unless all of~~
37 ~~the holders of the class or series consent, and except as~~
38 ~~provided in Section 407.~~

39 ~~(d) Notwithstanding its prior approval, an agreement~~
40 ~~of merger may be amended prior to the filing of the~~

1 ~~agreement of merger or the certificate of merger, as is~~
2 ~~applicable, if the amendment is approved by the board of~~
3 ~~each constituent corporation and, if the amendment~~
4 ~~changes any of the principal terms of the agreement, by~~
5 ~~the outstanding shares (Section 152), if required by~~
6 ~~Chapter 12 (commencing with Section 1200), in the same~~
7 ~~manner as the original agreement of merger. If the~~
8 ~~agreement of merger as so amended and approved is also~~
9 ~~approved by each of the other parties to the agreement~~
10 ~~of merger, the agreement of merger as so amended shall~~
11 ~~then constitute the agreement of merger.~~

12 ~~(e) The board of a constituent corporation may, in its~~
13 ~~discretion, abandon a merger, subject to the contractual~~
14 ~~rights, if any, of third parties, including other parties to~~
15 ~~the agreement of merger, without further approval by~~
16 ~~the outstanding shares (Section 152), at any time before~~
17 ~~the merger is effective.~~

18 ~~(f) Each constituent corporation shall sign the~~
19 ~~agreement of merger by its chairperson of the board,~~
20 ~~president or a vice president and also by its secretary or~~
21 ~~an assistant secretary acting on behalf of their respective~~
22 ~~corporations.~~

23 ~~(g) (1) If the surviving party is a corporation, or if a~~
24 ~~public benefit corporation (Section 5060), a mutual~~
25 ~~benefit corporation (Section 5059), a religious~~
26 ~~corporation (Section 5061), or a consumer cooperative~~
27 ~~corporation organized under the Consumer Cooperative~~
28 ~~Corporation Law (Section 12200) is a party to the merger,~~
29 ~~after required approvals of the merger by each~~
30 ~~constituent corporation through approval of the board~~
31 ~~(Section 151) and any approval of the outstanding shares~~
32 ~~(Section 152) required by Chapter 12 (commencing with~~
33 ~~Section 1200) and by the other parties to the merger, the~~
34 ~~surviving party shall file a copy of the agreement of~~
35 ~~merger with an officers' certificate of each constituent~~
36 ~~domestic and foreign corporation attached stating the~~
37 ~~total number of outstanding shares or membership~~
38 ~~interests of each class entitled to vote on the merger (and~~
39 ~~identifying any other person or persons whose approval~~
40 ~~is required), that the principal terms of the agreement in~~

1 ~~the form attached were approved by that corporation by~~
2 ~~a vote of a number of shares or membership interests of~~
3 ~~each class which equaled or exceeded the vote required,~~
4 ~~specifying each class entitled to vote and the percentage~~
5 ~~vote required of each class and, if applicable, by such~~
6 ~~other person or persons whose approval is required, or~~
7 ~~that the merger agreement was entitled to be and was~~
8 ~~approved by the board alone (as provided in Section 1201,~~
9 ~~in the case of corporations subject to that section). In lieu~~
10 ~~of an officers' certificate, a certificate of merger, on a form~~
11 ~~prescribed by the Secretary of State, shall be filed for each~~
12 ~~constituent other business entity. The certificate of~~
13 ~~merger shall be executed and acknowledged by the~~
14 ~~constituent other business entity by those persons~~
15 ~~required or authorized to execute the certificate of~~
16 ~~merger by the laws under which the other business entity~~
17 ~~is organized. The certificate of merger shall set forth, if a~~
18 ~~vote of the shareholders, members, partners, or other~~
19 ~~holders of interests of the constituent other business~~
20 ~~entity was required, a statement setting forth the total~~
21 ~~number of outstanding interests of each class entitled to~~
22 ~~vote on the merger and that the agreement of merger or~~
23 ~~its principal terms, as required, were approved by a vote~~
24 ~~of the number of interests of each class which equaled or~~
25 ~~exceeded the vote required, specifying each class entitled~~
26 ~~to vote and the percentage vote required of each class,~~
27 ~~and any other information required to be set forth under~~
28 ~~the laws under which the constituent other business~~
29 ~~entity is organized, including, if a domestic limited~~
30 ~~partnership is a party to the merger, subdivision (a) of~~
31 ~~Section 15678.4, if a domestic partnership is a party to the~~
32 ~~merger, subdivision (b) of Section 16915 and, if a~~
33 ~~domestic limited liability company is a party to the~~
34 ~~merger, subdivision (a) of Section 17552. If equity~~
35 ~~securities of a parent party (Section 1200) of a constituent~~
36 ~~corporation are to be issued in the merger, the officers'~~
37 ~~certificate of that constituent corporation shall state~~
38 ~~either that no vote of the shareholders of the parent party~~
39 ~~was required or that the required vote was obtained. The~~
40 ~~merger and any amendment of the articles of the~~

~~1 surviving corporation, if applicable, contained in the
2 agreement of merger shall thereupon be effective,
3 subject to subdivision (c) of Section 110 and subject to the
4 provisions of subdivision (j), and the several parties
5 thereto shall be one corporation. The agreement of
6 merger shall not be filed, however, until there has been
7 filed by or on behalf of each party to the merger taxed
8 under the Bank and Corporation Tax Law, the existence
9 of which is terminated by the merger, the certificate of
10 satisfaction of the Franchise Tax Board that all taxes
11 imposed by that law have been paid or secured. The
12 Secretary of State may certify a copy of the agreement of
13 merger separate from the officers' certificates and
14 certificates of merger attached thereto.~~

~~(2) If the surviving entity is an other business entity,
16 and no public benefit corporation (Section 5060), mutual
17 benefit corporation (Section 5059), religious corporation
18 (Section 5061), or consumer cooperative corporation
19 organized under the Consumer Cooperative Corporation
20 Law (Section 12200) is a party to the merger, after
21 required approvals of the merger by each constituent
22 corporation through approval of the board (Section 151)
23 and any approval of the outstanding shares (Section 152)
24 required by Chapter 12 (commencing with Section 1200)
25 and by the other parties to the merger, the parties to the
26 merger shall file a certificate of merger in the office of,
27 and on a form prescribed by, the Secretary of State. The
28 certificate of merger shall be executed and
29 acknowledged by each constituent corporation by its
30 chairperson of the board, president or a vice president
31 and also by its secretary or an assistant secretary domestic
32 constituent limited liability company by all of the
33 managers of the limited liability company (unless a lesser
34 number is specified in its articles of organization or
35 operating agreement) and by each domestic constituent
36 limited partnership by all general partners (unless a
37 lesser number is provided in the certificate of limited
38 partnership) and by each domestic constituent general
39 partnership by two partners (unless a lesser number is
40 provided in its partnership agreement) and by each~~

1 ~~foreign constituent limited liability company by one or~~
2 ~~more managers and by each foreign constituent limited~~
3 ~~partnership by one or more general partners, and by each~~
4 ~~constituent reciprocal insurer by the chairperson of the~~
5 ~~board, president, or vice president, and by the secretary~~
6 ~~or assistant secretary, or, if a constituent reciprocal~~
7 ~~insurer has not appointed those officers, by the~~
8 ~~chairperson of the board, president, or vice president,~~
9 ~~and by the secretary or assistant secretary of the~~
10 ~~constituent reciprocal insurer's attorney-in-fact. The~~
11 ~~certificate of merger shall be signed by each other party~~
12 ~~to the merger by those persons required or authorized to~~
13 ~~execute the certificate of merger by the laws under which~~
14 ~~that party is organized, specifying for that party the~~
15 ~~provision of law or other basis for the authority of the~~
16 ~~signing persons. The certificate of merger shall set forth~~
17 ~~all of the following:~~

18 ~~(A) The names and the Secretary of State's file~~
19 ~~numbers, if any, of each party to the merger, separately~~
20 ~~identifying the disappearing parties and the surviving~~
21 ~~party.~~

22 ~~(B) If the approval of the outstanding shares of a~~
23 ~~constituent corporation was required by Chapter 12~~
24 ~~(commencing with Section 1200), a statement setting~~
25 ~~forth the total number of outstanding shares of each class~~
26 ~~entitled to vote on the merger and that the principal~~
27 ~~terms of the agreement of merger were approved by a~~
28 ~~vote of the number of shares of each class entitled to vote~~
29 ~~and the percentage vote required of each class.~~

30 ~~(C) The future effective date or time, not more than~~
31 ~~90 days subsequent to the date of filing of the merger, if~~
32 ~~the merger is not to be effective upon the filing of the~~
33 ~~certificate of merger with the office of the Secretary of~~
34 ~~State.~~

35 ~~(D) A statement, by each party to the merger that is~~
36 ~~a domestic corporation not organized under this division,~~
37 ~~a foreign corporation, or an other business entity, that the~~
38 ~~laws under which it is organized either authorize the~~
39 ~~merger or do not prohibit the merger, as required by~~
40 ~~subdivision (a).~~

~~(E) Any other information required to be stated in the certificate of merger by the laws under which each party to the merger is organized, including, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552, if a domestic partnership is a party to the merger, subdivision (b) of Section 16915, and, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4.~~

~~Unless a future effective date or time is provided in a certificate of merger, in which event the merger shall be effective at that future effective date or time, a merger shall be effective upon the filing of the certificate of merger in the office of the Secretary of State and the several parties thereto shall be one entity. The certificate of merger shall not be filed, however, until there has been filed by or on behalf of each party to the merger that is taxed under the Bank and Corporation Tax Law, the existence of which is terminated by the merger, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by the Bank and Corporation Tax Law have been paid or secured. The surviving other business entity shall keep a copy of the agreement of merger at its principal place of business which, for purposes of this subdivision, shall be the office referred to in Section 17057 if a domestic limited liability company, at the business address specified in paragraph (5) of subdivision (a) of Section 17552 if a foreign limited liability company, at the office referred to in subdivision (a) of Section 16403 if a domestic general partnership, at the business address specified in subdivision (f) of Section 16911 if a foreign partnership, at the office referred to in subdivision (a) of Section 15614 if a domestic limited partnership, or at the business address specified in paragraph (5) of subdivision (a) of Section 15678.4 if a foreign limited partnership. Upon the request of a holder of equity securities of a party to the merger, a person with authority to do so on behalf of the surviving other business entity shall promptly deliver to that holder a copy of the agreement of merger. A waiver by that holder of the rights provided in the foregoing sentence shall be unenforceable. If a domestic~~

1 reciprocal insurer organized after 1974 to provide
2 medical malpractice insurance is a party to the merger
3 the agreement of merger or certificate of merger shall
4 not be filed until there has been filed the certificate issued
5 by the Insurance Commissioner approving the merger in
6 accordance with Section 1555 of the Insurance Code.

7 (h) (1) A copy of an agreement of merger certified on
8 or after the effective date by an official having custody
9 thereof has the same force in evidence as the original and,
10 except as against the state, is conclusive evidence of the
11 performance of all conditions precedent to the merger,
12 the existence on the effective date of the surviving party
13 to the merger and the performance of the conditions
14 necessary to the adoption of any amendment to the
15 articles, if applicable, contained in the agreement of
16 merger.

17 (2) For all purposes for a merger in which the
18 surviving entity is a domestic other business entity, and
19 the filing of a certificate of merger is required by
20 paragraph (2) of subdivision (g), a copy of the certificate
21 of merger duly certified by the Secretary of State is
22 conclusive evidence of the merger of the constituent
23 corporations, either by themselves or together with the
24 other parties to the merger, into the surviving other
25 business entity.

26 (i) (1) Upon a merger pursuant to this section, the
27 separate existences of the disappearing parties to the
28 merger cease and the surviving party to the merger shall
29 succeed, without other transfer, to all the rights and
30 property of each of the disappearing parties to the
31 merger and shall be subject to all the debts and liabilities
32 of each in the same manner as if the surviving party to the
33 merger had itself incurred them.

34 (2) All rights of creditors and all liens upon the
35 property of each of the constituent corporations and
36 other parties to the merger shall be preserved
37 unimpaired, provided that those liens upon property of
38 a disappearing party shall be limited to the property
39 affected thereby immediately prior to the time the
40 merger is effective.

~~(3) Any action or proceeding pending by or against any disappearing corporation or disappearing party to the merger may be prosecuted to judgment, which shall bind the surviving party, or the surviving party may be proceeded against or substituted in its place.~~

~~(4) If a limited partnership or a general partnership is a party to the merger, nothing in this section is intended to affect the liability a general partner of a disappearing limited partnership or general partnership may have in connection with the debts and liabilities of the disappearing limited partnership or general partnership existing prior to the time the merger is effective.~~

~~(j) (1) The merger of domestic corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivision (a) and this subdivision.~~

~~(2) If the surviving party is a domestic corporation or domestic other business entity, the merger proceedings with respect to that party and any domestic disappearing corporation shall conform to the provisions of this section. If the surviving party is a foreign corporation or foreign other business entity, then, subject to the requirements of subdivision (c), and of Section 407 and Chapter 12 (commencing with Section 1200) and Chapter 13 (commencing with Section 1300), and, if applicable, corresponding provisions of the Nonprofit Corporation Law or the Consumer Cooperative Corporation Law with respect to any domestic constituent corporations, Chapter 13 (commencing with Section 17600) of Title 2.5 with respect to any domestic constituent limited liability companies, Article 6 (commencing with Section 16601) of Chapter 5 of Title 2 with respect to any domestic constituent general partnerships, and Article 7.6 (commencing with Section 15679.1) of Chapter 3 of Title 2 with respect to any domestic constituent limited partnerships, the merger proceedings may be in accordance with the laws of the state or place of incorporation or organization of the surviving party.~~

1 ~~(3) If the surviving party is a domestic corporation or~~
2 ~~domestic other business entity, the certificate of merger,~~
3 ~~or the agreement of merger with attachments shall be~~
4 ~~filed as provided in subdivision (g) and thereupon,~~
5 ~~subject to subdivision (e) of Section 110 or paragraph (2)~~
6 ~~of subdivision (g), as is applicable, the merger shall be~~
7 ~~effective as to each domestic party.~~

8 ~~(4) If the surviving party to the merger is a foreign~~
9 ~~corporation or foreign other business entity, the merger~~
10 ~~shall become effective in accordance with the law of the~~
11 ~~jurisdiction in which the surviving party is organized, but,~~
12 ~~except as provided in paragraph (5), the merger shall be~~
13 ~~effective as to any domestic disappearing corporation as~~
14 ~~of the time of effectiveness in the foreign jurisdiction~~
15 ~~upon the filing in this state of a copy of the agreement of~~
16 ~~merger with an officers' certificate of each constituent~~
17 ~~foreign and domestic corporation and a certificate of~~
18 ~~merger of each constituent other party attached, which~~
19 ~~officers' certificates and certificates of merger shall~~
20 ~~conform to the requirements of paragraph (1) of~~
21 ~~subdivision (g). If one or more domestic other business~~
22 ~~entities is a disappearing party in a merger pursuant to~~
23 ~~this subdivision in which a foreign other business entity~~
24 ~~is the surviving entity, a certificate of merger as required~~
25 ~~by the laws under which that domestic other business~~
26 ~~entity is organized, including subdivision (a) of Section~~
27 ~~15678.4, subdivision (b) of Section 16915, or subdivision~~
28 ~~(a) of Section 17552, as is applicable, shall also be filed at~~
29 ~~the same time as the filing of the agreement of merger.~~

30 ~~(5) If the date of the filing in this state pursuant to this~~
31 ~~subdivision is more than six months after the time of the~~
32 ~~effectiveness in the foreign jurisdiction, or if the powers~~
33 ~~of the domestic corporation are suspended at the time of~~
34 ~~effectiveness in a foreign jurisdiction, the merger shall be~~
35 ~~effective as to the domestic disappearing corporation as~~
36 ~~of the date of filing in this state.~~

37 ~~(6) In a merger described in paragraph (3) or (4),~~
38 ~~each foreign disappearing corporation that is qualified for~~
39 ~~the transaction of intrastate business shall automatically~~
40 ~~by the filing pursuant to this subdivision surrender its~~

1 ~~right to transact intrastate business as of the date of filing~~
2 ~~in this state or, if later, the effective date of the merger.~~
3 ~~With respect to each foreign disappearing other business~~
4 ~~entity previously registered for the transaction of~~
5 ~~intrastate business in this state, the filing of the~~
6 ~~agreement of merger or certificate of merger, as is~~
7 ~~applicable, pursuant to this subdivision automatically has~~
8 ~~the effect of a cancellation of registration for that foreign~~
9 ~~other business entity as of the date of filing in this state or,~~
10 ~~if later, the effective date of the merger, without the~~
11 ~~necessity of the filing of a certificate of cancellation.~~

12 ~~(7) A certificate of satisfaction of the Franchise Tax~~
13 ~~Board for each disappearing party to the merger shall be~~
14 ~~filed when required by subdivision (g) or when required~~
15 ~~by Section 23334 of the Revenue and Taxation Code.~~

16 ~~SEC. 12. Section 1200 of the Corporations Code is~~
17 ~~amended to read:~~

18 ~~1200. A reorganization (Section 181) or a share~~
19 ~~exchange tender offer (Section 183.5) shall be approved~~
20 ~~by the board of:~~

21 ~~(a) Each constituent corporation in a merger~~
22 ~~reorganization;~~

23 ~~(b) The acquiring corporation in an exchange~~
24 ~~reorganization;~~

25 ~~(c) The acquiring corporation and the corporation~~
26 ~~whose property and assets are acquired in a sale of assets~~
27 ~~reorganization;~~

28 ~~(d) The acquiring corporation in a share exchange~~
29 ~~tender offer (Section 183.5); and~~

30 ~~(e) The corporation in control of any constituent or~~
31 ~~acquiring corporation or other business entity under~~
32 ~~subdivision (a), (b) or (c) and whose equity securities are~~
33 ~~issued, transferred, or exchanged in the reorganization (a~~
34 ~~“parent party”).~~

35 ~~SEC. 13. Section 1201 of the Corporations Code is~~
36 ~~amended to read:~~

37 ~~1201. (a) The principal terms of a reorganization~~
38 ~~shall be approved by the outstanding shares (Section 152)~~
39 ~~of each class of each corporation the approval of whose~~
40 ~~board is required under Section 1200, except as provided~~

1 ~~in subdivision (b) and except that (unless otherwise~~
2 ~~provided in the articles) no approval of any class of~~
3 ~~outstanding preferred shares of the surviving or~~
4 ~~acquiring corporation or parent party shall be required if~~
5 ~~the rights, preferences, privileges and restrictions~~
6 ~~granted to or imposed upon such class of shares remain~~
7 ~~unchanged (subject to the provisions of subdivision (c)).~~
8 ~~For the purpose of this subdivision, two classes of~~
9 ~~common shares differing only as to voting rights shall be~~
10 ~~considered as a single class of shares.~~

11 ~~(b) No approval of the outstanding shares (Section~~
12 ~~152) is required by subdivision (a) in the case of any~~
13 ~~corporation if that corporation, or its shareholders~~
14 ~~immediately before the reorganization, or both, shall own~~
15 ~~(immediately after the reorganization) equity securities;~~
16 ~~other than any warrant or right to subscribe to or~~
17 ~~purchase those equity securities, of the surviving or~~
18 ~~acquiring corporation or a parent party (subdivision (d)~~
19 ~~of Section 1200) possessing more than five-sixths of the~~
20 ~~voting power of the surviving or acquiring corporation or~~
21 ~~parent party. In making the determination of ownership~~
22 ~~by the shareholders of a corporation, immediately after~~
23 ~~the reorganization, of equity securities pursuant to the~~
24 ~~preceding sentence, equity securities which they owned~~
25 ~~immediately before the reorganization as shareholders of~~
26 ~~another party to the transaction shall be disregarded. For~~
27 ~~the purpose of this section only, the voting power of a~~
28 ~~corporation shall be calculated by assuming the~~
29 ~~conversion of all equity securities convertible~~
30 ~~(immediately or at some future time) into shares entitled~~
31 ~~to vote but not assuming the exercise of any warrant or~~
32 ~~right to subscribe to or purchase such shares.~~

33 ~~(c) Notwithstanding the provisions of subdivision (b),~~
34 ~~the principal terms of a reorganization shall be approved~~
35 ~~by the outstanding shares (Section 152) of the surviving~~
36 ~~corporation in a merger reorganization if any~~
37 ~~amendment is made to its articles which would otherwise~~
38 ~~require such approval.~~

39 ~~(d) Notwithstanding the provisions of subdivision (b),~~
40 ~~the principal terms of a reorganization shall be approved~~

1 by the outstanding shares (Section 152) of any class of a
2 corporation which is a party to a merger or sale of assets
3 reorganization if holders of shares of that class receive
4 shares of the surviving or acquiring corporation or parent
5 party having different rights, preferences, privileges or
6 restrictions than those surrendered. Shares in a foreign
7 corporation received in exchange for shares in a domestic
8 corporation have different rights, preferences, privileges
9 and restrictions within the meaning of the preceding
10 sentence.

11 (e) Notwithstanding subdivisions (a) and (b), the
12 principal terms of a reorganization shall be approved by
13 the affirmative vote of at least two-thirds of each class of
14 the outstanding shares of any close corporation if the
15 reorganization would result in their receiving shares of a
16 corporation which is not a close corporation. However,
17 the articles may provide for a lesser vote, but not less than
18 a majority of the outstanding shares of each class.

19 (f) Notwithstanding subdivisions (a) and (b), the
20 principal terms of a reorganization shall be approved by
21 the outstanding shares (Section 152) of any class of a
22 corporation which is a party to a merger reorganization
23 if holders of shares of that class receive interests of a
24 surviving other business entity in the merger.

25 (g) Notwithstanding subdivisions (a) and (b), the
26 principal terms of a reorganization shall be approved by
27 all shareholders of any class or series if, as a result of the
28 reorganization, the holders of that class or series become
29 personally liable for any obligations of a party to the
30 reorganization, unless all holders of that class or series
31 have the dissenters' rights provided in Chapter 13
32 (commencing with Section 1300).

33 (h) Any approval required by this section may be
34 given before or after the approval by the board.
35 Notwithstanding approval required by this section, the
36 board may abandon the proposed reorganization without
37 further action by the shareholders, subject to the
38 contractual rights, if any, of third parties.

39 SEC. 14.

1 SEC. 2. Section 2115 of the Corporations Code is
2 amended to read:

3 2115. (a) A foreign corporation (other than a foreign
4 association or foreign nonprofit corporation but including
5 a foreign parent corporation even though it does not itself
6 transact intrastate business) is subject to the
7 requirements of subdivision (b) if the average of the
8 property factor, the payroll factor, and the sales factor (as
9 defined in Sections 25129, 25132, and 25134 of the
10 Revenue and Taxation Code) with respect to it is more
11 than 50 percent during its latest full income year and if
12 more than one-half of its outstanding voting securities are
13 held of record by persons having addresses in this state.
14 The property factor, payroll factor, and sales factor shall
15 be those used in computing the portion of its income
16 allocable to this state in its franchise tax return or, with
17 respect to corporations the allocation of whose income is
18 governed by special formulas or that are not required to
19 file separate or any tax returns, which would have been
20 so used if they were governed by this three-factor
21 formula. The determination of these factors with respect
22 to any parent corporation shall be made on a consolidated
23 basis, including in a unitary computation (after
24 elimination of intercompany transactions) the property,
25 payroll, and sales of the parent and all of its subsidiaries
26 in which it owns directly or indirectly more than 50
27 percent of the outstanding shares entitled to vote for the
28 election of directors, but deducting a percentage of the
29 property, payroll, and sales of any subsidiary equal to the
30 percentage minority ownership, if any, in the subsidiary.
31 For the purpose of this subdivision, any securities held to
32 the knowledge of the issuer in the names of
33 broker-dealers, nominees for broker-dealers (including
34 clearing corporations), or banks, associations, or other
35 entities holding securities in a nominee name or
36 otherwise on behalf of a beneficial owner (collectively
37 "Nominee Holders"), shall not be considered
38 outstanding. However, if the foreign corporation requests
39 all Nominee Holders to certify, with respect to all
40 beneficial owners for whom securities are held, the

1 number of shares held for those beneficial owners having
2 addresses (as shown on the records of the Nominee
3 Holder) in this state and outside of this state, then all
4 shares so certified shall be considered outstanding and
5 held of record by persons having addresses either in this
6 state or outside of this state as so certified, provided that
7 the certification so provided shall be retained with the
8 record of shareholders and made available for inspection
9 and copying in the same manner as is provided in Section
10 1600 with respect to that record. A current list of
11 beneficial owners of a foreign corporation's securities
12 provided to the corporation by one or more Nominee
13 Holders or their agent pursuant to the requirements of
14 Rule 14b-1(b)(3) or 14b-2(b)(3) as adopted on January
15 6, 1992, promulgated under the Securities Exchange Act
16 of 1934, shall constitute an acceptable certification with
17 respect to beneficial owners for the purposes of this
18 subdivision.

19 (b) Except as provided in subdivision (c), the
20 following chapters and sections of this division shall apply
21 to a foreign corporation as defined in subdivision (a) (to
22 the exclusion of the law of the jurisdiction in which it is
23 incorporated):

24 Chapter 1 (general provisions and definitions), to the
25 extent applicable to the following provisions;

26 Section 301 (annual election of directors);

27 Section 303 (removal of directors without cause);

28 Section 304 (removal of directors by court
29 proceedings);

30 Section 305, subdivision (c) (~~filing~~ *filling* of director
31 vacancies where less than a majority in office elected by
32 shareholders);

33 Section 309 (directors' standard of care);

34 Section 316 (excluding paragraph (3) of subdivision (a)
35 and paragraph (3) of subdivision (f)) (liability of
36 directors for unlawful distributions);

37 Section 317 (indemnification of directors, officers, and
38 others);

39 Sections 500 to 505, inclusive (limitations on corporate
40 distributions in cash or property);

1 Section 506 (liability of shareholder who receives
2 unlawful distribution);
3 Section 600, subdivisions (b) and (c) (requirement for
4 annual shareholders' meeting and remedy if same not
5 timely held);
6 Section 708, subdivisions (a), (b), and (c)
7 (shareholder's right to cumulate votes at any election of
8 directors);
9 Section 710 (supermajority vote requirement);
10 Section 1001, subdivision (d) (limitations on sale of
11 assets);
12 Section 1101 (provisions following subdivision (e))
13 (limitations on mergers);
14 Chapter 12 (commencing with Section 1200)
15 (reorganizations);
16 Chapter 13 (commencing with Section 1300)
17 (dissenters' rights);
18 Sections 1500 and 1501 (records and reports);
19 Section 1508 (action by Attorney General);
20 Chapter 16 (commencing with Section 1600) (rights of
21 inspection).
22 (c) This section does not apply to any corporation (1)
23 with outstanding securities listed on the New York Stock
24 Exchange or the American Stock Exchange, or (2) with
25 outstanding securities designated as qualified for trading
26 as a national market security on the National Association
27 of Securities Dealers Automatic Quotation System (or
28 any successor national market system) if the corporation
29 has at least 800 holders of its equity securities as of the
30 record date of its most recent annual meeting of
31 shareholders, or (3) if all of its voting shares (other than
32 directors' qualifying shares) are owned directly or
33 indirectly by a corporation or corporations not subject to
34 this section. For purposes of determining the number of
35 holders of a corporation's equity securities under clause
36 (2) of this subdivision, there shall be included, in addition
37 to the number of recordholders reflected on the
38 corporation's stock records, the number of holders of the
39 equity securities held in the name of any Nominee Holder
40 that furnishes the corporation with a certification

1 pursuant to subdivision (a) provided that the corporation
2 retains the certification with the record of shareholders
3 and makes it available for inspection and copying in the
4 same manner as is provided in Section 1600 with respect
5 to that record.

6 (d) For purposes of subdivision (a), the requirements
7 of subdivision (b) shall become applicable to a foreign
8 corporation only upon the first day of the first income
9 year of the corporation (i) commencing on or after the
10 135th day of the *income year immediately following the*
11 *latest income year* with respect to which the tests
12 referred to in subdivision (a) have been met or (ii)
13 *commencing on or after the 135th day of the income year*
14 during which a final order has been entered by a court of
15 competent jurisdiction declaring that those tests have
16 been met.

17 (e) For purposes of subdivision (a), the requirements
18 of subdivision (b) shall cease to be applicable to a foreign
19 corporation (i) at the end of the first income year of the
20 corporation immediately following the latest income year
21 with respect to which at least one of the tests referred to
22 in subdivision (a) is not met or (ii) *at the end of the*
23 *income year of the corporation* during which a final order
24 has been entered by a court of competent jurisdiction
25 declaring that one of those tests is not met, provided that
26 a contrary order has not been entered before the end of
27 the income year.

28 ~~SEC. 15. Section 6010 of the Corporations Code is~~
29 ~~amended to read:~~

30 ~~6010. (a) A public benefit corporation may merge~~
31 ~~with any domestic corporation, foreign corporation,~~
32 ~~foreign business corporation or other business entity~~
33 ~~(Section 174.5). However, without the prior written~~
34 ~~consent of the Attorney General, a public benefit~~
35 ~~corporation may only merge with another public benefit~~
36 ~~corporation or a religious corporation or a foreign~~
37 ~~nonprofit corporation the articles of which provide that~~
38 ~~its assets are irrevocably dedicated to charitable,~~
39 ~~religious, or public purposes.~~

1 ~~(b) At least 20 days prior to consummation of any~~
2 ~~merger allowed by subdivision (a), the Attorney General~~
3 ~~must be provided with a copy of the proposed agreement~~
4 ~~of merger.~~

5 ~~(c) Without the prior written consent of the Attorney~~
6 ~~General, when a merger occurs pursuant to subdivision~~
7 ~~(a), each member of a constituent corporation may only~~
8 ~~receive or keep a membership in the surviving~~
9 ~~corporation for or as a result of the member's~~
10 ~~membership in the constituent corporation.~~

11 ~~SEC. 16. Section 6019.1 is added to the Corporations~~
12 ~~Code, to read:~~

13 ~~6019.1. (a) Subject to Sections 6010 and 9640, any one~~
14 ~~or more corporations may merge with one or more other~~
15 ~~business entities (Section 174.5). One or more other~~
16 ~~domestic corporations and foreign corporations (Section~~
17 ~~5053) may be parties to the merger. Notwithstanding the~~
18 ~~provisions of this section, these mergers may be effected~~
19 ~~only if the following requirements are met:~~

20 ~~(1) In a merger in which a domestic corporation or~~
21 ~~domestic other business entity is a party, it is authorized~~
22 ~~by the laws under which it is organized to effect the~~
23 ~~merger.~~

24 ~~(2) In a merger in which a foreign corporation is a~~
25 ~~party, it is authorized by the laws under which it is~~
26 ~~organized to effect the merger.~~

27 ~~(3) In a merger in which a foreign other business~~
28 ~~entity is the surviving party, the laws of the jurisdiction~~
29 ~~under which it is organized authorize the merger.~~

30 ~~(4) In a merger in which a foreign other business~~
31 ~~entity is a disappearing party, it is not prohibited by the~~
32 ~~laws under which it is organized from effecting the~~
33 ~~merger.~~

34 ~~(b) Each corporation and each other party that desires~~
35 ~~to merge shall approve an agreement of merger. The~~
36 ~~board and the members (Section 5034) of each~~
37 ~~corporation that desires to merge, and each other person~~
38 ~~or persons, if any, whose approval of an amendment of~~
39 ~~articles of that corporation is required by the articles shall~~
40 ~~approve the agreement of merger. The agreement of~~

~~merger shall be approved on behalf of each other party by those persons authorized or required to approve the merger by the laws under which it is organized. The parties desiring to merge shall be parties to the agreement of merger and other persons, including a parent party (Section 1200), may be parties to the agreement of merger. The agreement of merger shall state all of the following:~~

~~(1) The terms and conditions of the merger.~~

~~(2) The name and place of incorporation or organization of each party and the identity of the surviving party.~~

~~(3) The amendments, if any, subject to Sections 5810 and 5816, to the articles of the surviving corporation, if applicable, to be effected by the merger. The name of the surviving corporation may be, subject to subdivision (b) of Section 5122 and subdivision (b) of Section 9122, the same as or similar to the name of a disappearing party to the merger.~~

~~(4) The manner, if any, of converting the memberships of each of the constituent corporations into shares, memberships, interests or other securities of the surviving party; and, if any memberships of any of the constituent corporations are not to be converted solely into shares, memberships, interests, or other securities of the surviving party, the cash, rights, securities or other property which the holders of those memberships are to receive in exchange for the memberships, which cash, rights, securities or other property may be in addition to or in lieu of shares, memberships, interests or other securities of the surviving corporation or surviving other business entity.~~

~~(5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.2, or, if a domestic general partnership is a party to the merger, subdivision (a) of Section 16911, or, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17551.~~

1 ~~(6) Any other details or provisions as are desired.~~

2 ~~(c) Notwithstanding its prior approval, an agreement~~
3 ~~of merger may be amended prior to the filing of the~~
4 ~~agreement of merger if the amendment is approved by~~
5 ~~each constituent corporation in the same manner as the~~
6 ~~original agreement of merger. If the agreement of~~
7 ~~merger as so amended and approved is also approved by~~
8 ~~each of the other parties to the agreement of merger, as~~
9 ~~so amended it shall then constitute the agreement of~~
10 ~~merger.~~

11 ~~(d) The board of a constituent corporation may, in its~~
12 ~~discretion, abandon a merger, subject to the contractual~~
13 ~~rights, if any, of third parties, including other parties to~~
14 ~~the agreement of merger, without further approval by~~
15 ~~the members (Section 5034) or other persons, at any time~~
16 ~~before the merger is effective.~~

17 ~~(e) Each constituent corporation shall sign the~~
18 ~~agreement of merger by its chairperson of the board,~~
19 ~~president or a vice president, and also by its secretary or~~
20 ~~an assistant secretary acting on behalf of their respective~~
21 ~~corporations.~~

22 ~~(f) After required approvals of the merger by each~~
23 ~~constituent corporation and each other party to the~~
24 ~~merger, the surviving party shall file a copy of the~~
25 ~~agreement of merger with an officers' certificate of each~~
26 ~~constituent domestic and foreign corporation attached~~
27 ~~stating the total number of outstanding shares or~~
28 ~~membership interests of each class, if any, entitled to vote~~
29 ~~on the merger (and identifying any other person or~~
30 ~~persons whose approval is required), that the principal~~
31 ~~terms of the agreement of merger in the form attached~~
32 ~~were approved by that corporation by a vote of a number~~
33 ~~of shares or membership interests of each class entitled to~~
34 ~~vote, if any, which equaled or exceeded the vote~~
35 ~~required, specifying each class entitled to vote and the~~
36 ~~percentage vote required of each class, and, if applicable,~~
37 ~~by the other person or persons whose approval is~~
38 ~~required.~~

39 ~~If equity securities of a parent party (Section 1200) are~~
40 ~~to be issued in the merger, the officers' certificate of the~~

1 controlled party shall state either that no vote of the
2 shareholders of the parent party was required or that the
3 required vote was obtained. The merger and any
4 amendment of the articles of the surviving corporation,
5 if applicable, contained in the agreement of merger shall
6 be effective upon the filing of the agreement of merger,
7 subject to subdivision (h). The agreement of merger shall
8 not be filed, however, until there has been filed by or on
9 behalf of each party to the merger taxed under the Bank
10 and Corporation Tax Law, the existence of which is
11 terminated by the merger, the certificate of satisfaction
12 of the Franchise Tax Board that all taxes imposed by that
13 law have been paid or secured.

14 In lieu of an officers' certificate, a certificate of merger,
15 on a form prescribed by the Secretary of State, shall be
16 filed for each constituent other business entity. The
17 certificate of merger shall be executed and
18 acknowledged by each domestic constituent limited
19 liability company by all of the managers of the limited
20 liability company (unless a lesser number is specified in
21 its articles of organization or operating agreement) and
22 by each domestic constituent limited partnership by all
23 general partners (unless a lesser number is provided in
24 the certificate of limited partnership) and by each
25 domestic constituent general partnership by two
26 partners (unless a lesser number is provided in its
27 partnership agreement) and by each foreign constituent
28 limited liability company by one or more managers and
29 by each foreign constituent limited partnership by one or
30 more general partners, and by each constituent
31 reciprocal insurer by the chairperson of the board,
32 president, or vice president, and by the secretary or
33 assistant secretary, or, if a constituent reciprocal insurer
34 has not appointed any of those officers, by the chairperson
35 of the board, president, or vice president, and by the
36 secretary or assistant secretary of the constituent
37 reciprocal insurer's attorney-in-fact, and by each other
38 party to the merger by those persons required or
39 authorized to execute the certificate of merger by the
40 laws under which that party is organized, specifying for

1 ~~that party the provision of law or other basis for the~~
2 ~~authority of the signing persons.~~

3 ~~The certificate of merger shall set forth, if a vote of the~~
4 ~~shareholders, members, partners or other holders of~~
5 ~~interests of the constituent other business entity was~~
6 ~~required, a statement setting forth the total number of~~
7 ~~outstanding interests of each class entitled to vote on the~~
8 ~~merger and that the agreement of merger or its principal~~
9 ~~terms, as required, were approved by a vote of the~~
10 ~~number of interests of each class which equaled or~~
11 ~~exceeded the vote required, specifying each class entitled~~
12 ~~to vote and the percentage vote required of each class,~~
13 ~~and any other information required to be set forth under~~
14 ~~the laws under which the constituent other business~~
15 ~~entity is organized, including, if a domestic limited~~
16 ~~partnership is a party to the merger, subdivision (a) of~~
17 ~~Section 15678.4, if a domestic general partnership is a~~
18 ~~party to the merger, subdivision (b) of Section 16915 and,~~
19 ~~if a domestic limited liability company is a party to the~~
20 ~~merger, subdivision (a) of Section 17552.~~

21 ~~The Secretary of State may certify a copy of the~~
22 ~~agreement of merger separate from the officers'~~
23 ~~certificates and certificates of merger attached thereto.~~

24 ~~(g) A copy of an agreement of merger certified on or~~
25 ~~after the effective date by an official having custody~~
26 ~~thereof has the same force in evidence as the original and,~~
27 ~~except as against the state, is conclusive evidence of the~~
28 ~~performance of all conditions precedent to the merger,~~
29 ~~the existence on the effective date of the surviving party~~
30 ~~to the merger, the performance of the conditions~~
31 ~~necessary to the adoption of any amendment to the~~
32 ~~articles, if applicable, contained in the agreement of~~
33 ~~merger, and the merger of the constituent corporations,~~
34 ~~either by themselves or together with other constituent~~
35 ~~parties, into the surviving party to the merger.~~

36 ~~(h) (1) The merger of domestic corporations with~~
37 ~~foreign corporations or foreign other business entities in~~
38 ~~a merger in which one or more other business entities is~~
39 ~~a party shall comply with subdivisions (a) and (f).~~

~~(2) Subject to subdivision (e) of Section 5008 and paragraph (3), the merger shall be effective as to each domestic constituent corporation and domestic constituent other business entity upon filing of the agreement of merger with attachments as provided in subdivision (f).~~

~~(3) If the surviving party is a foreign corporation or foreign other business entity, except as provided in paragraph (4), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of subdivision (f).~~

~~If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which each domestic other business entity is organized, including subdivision (a) of Section 15678.4, subdivision (b) of Section 16915 or subdivision (a) of Section 17552, if applicable, shall also be filed at the same time as the filing of the agreement of merger.~~

~~(4) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of a domestic disappearing corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation as of the date of filing in this state.~~

~~(5) Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (f) surrender its right to transact intrastate business as of the date of filing in this state or, if later, the effective date of the merger. With respect to each foreign disappearing~~

~~1 other business entity previously registered for the
2 transaction of intrastate business in this state, the filing of
3 the agreement of merger pursuant to subdivision (f)
4 automatically has the effect of a cancellation of
5 registration for that foreign other business entity as of the
6 date of filing in this state or, if later, the effective date of
7 the merger without the necessity of the filing of a
8 certificate of cancellation.~~

~~9 SEC. 17. Section 6020 of the Corporations Code is
10 amended to read:~~

~~11 6020. (a) Upon merger pursuant to this chapter the
12 separate existence of the disappearing corporations
13 ceases and the surviving domestic corporation, foreign
14 corporation, or other business entity shall succeed,
15 without other transfer, to all the rights and property of
16 each of the disappearing corporations and shall be subject
17 to all the debts and liabilities of each and trust obligations
18 upon the property of a disappearing corporation in the
19 same manner as if the surviving corporation or other
20 business entity had itself incurred them.~~

~~21 (b) All rights of creditors and all liens and trusts upon
22 or arising from the property of each of the constituent
23 corporations shall be preserved unimpaired, provided
24 that such liens and trust obligations upon property of a
25 disappearing corporation shall be limited to the property
26 affected thereby immediately prior to the time the
27 merger is effective.~~

~~28 (c) Any action or proceeding pending by or against
29 any disappearing corporation may be prosecuted to
30 judgment, which shall bind the surviving party to the
31 merger, or the surviving party to the merger may be
32 proceeded against or substituted in its place.~~

~~33 SEC. 18. Section 6021 of the Corporations Code is
34 amended to read:~~

~~35 6021. Whenever a domestic or foreign corporation or
36 other business entity (Section 174.5) having any real
37 property in this state merges with another domestic or
38 foreign corporation or other business entity, pursuant to
39 the laws of this state or of the state or place in which any
40 constituent party to the merger was organized, and the~~

~~laws of the state or place of organization (including this state) of any disappearing party to the merger provide substantially that the making and filing of the agreement of merger vests in the surviving party to the merger all the real property of any disappearing party to the merger, the filing for record in the office of the county recorder of any county in this state in which any of the real property of that disappearing party to the merger is located of either (a) a certificate prescribed by the Secretary of State, or (b) a copy of the agreement of merger or certificate of merger, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the merger is effected, shall evidence record ownership in the surviving party to the merger of all interest of the disappearing party to the merger in and to the real property located in that county.~~

~~SEC. 19. Section 6022 of the Corporations Code is amended to read:~~

~~6022. Any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance, which is made to a constituent corporation and which takes effect or remains payable after the merger, inures to the surviving party to the merger.~~

~~SEC. 20. Section 8010 of the Corporations Code is amended to read:~~

~~8010. A mutual benefit corporation may merge with any domestic corporation, foreign corporation, foreign business corporation or other business entity (Section 174.5). However, a merger with a public benefit corporation or a religious corporation must have the prior written consent of the Attorney General.~~

~~SEC. 21. Section 8019.1 is added to the Corporations Code, to read:~~

~~8019.1. (a) Subject to Section 8010, any one or more corporations may merge with one or more other business entities (Section 174.5). One or more other domestic corporations, foreign corporations (Section 5053) and foreign business corporations (Section 5052) may be~~

~~parties to the merger. Notwithstanding the provisions of this section, those mergers may be effected only if the following requirements are met:~~

~~(1) In a merger in which a domestic corporation or domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.~~

~~(2) In a merger in which a foreign corporation or foreign business corporation is a party, it is authorized by the laws under which it is organized to effect the merger.~~

~~(3) In a merger in which a foreign other business entity is the surviving party, the laws of the jurisdiction under which it is organized authorize the merger.~~

~~(4) In a merger in which a foreign other business entity is a disappearing party, it is not prohibited by the laws under which it is organized from effecting the merger.~~

~~(b) Each corporation and each other party that desires to merge shall approve an agreement of merger. The board and the members (Section 5034) of each corporation that desires to merge, and each other person or persons, if any, whose approval of an amendment of articles of that corporation is required by the articles shall approve the agreement of merger. The agreement of merger shall be approved on behalf of each other constituent party by those persons authorized or required to approve the merger by the laws under which it is organized. The parties desiring to merge shall be parties to the agreement of merger and other persons, including a parent party (Section 1200), may be parties to the agreement of merger. The agreement of merger shall state all of the following:~~

~~(1) The terms and conditions of the merger.~~

~~(2) The name and place of incorporation or organization of each party and the identity of the surviving party.~~

~~(3) The amendments, if any, subject to Sections 7810 and 7816, to the articles of the surviving corporation, if applicable, to be effected by the merger. The name of the surviving corporation may be, subject to subdivision (b)~~

1 of Section 7122, the same as or similar to the name of a
2 disappearing party to the merger.

3 (4) The manner, if any, of converting the
4 memberships or securities of each of the constituent
5 corporations into shares, memberships, interests or other
6 securities of the surviving party; and, if any memberships
7 or securities of any of the constituent corporations are not
8 to be converted solely into shares, memberships, interests
9 or other securities of the surviving party, the cash, rights,
10 securities, or other property which the holders of those
11 memberships or securities are to receive in exchange for
12 the memberships or securities, which cash, rights,
13 securities, or other property may be in addition to or in
14 lieu of shares, memberships, interests, or other securities
15 of the surviving party.

16 (5) Any other details or provisions required by the
17 laws under which any party to the merger is organized;
18 including, if a domestic limited partnership is a party to
19 the merger, subdivision (a) of Section 15678.2, or, if a
20 domestic general partnership is a party to the merger,
21 subdivision (a) of Section 16911, or, if a domestic limited
22 liability company is a party to the merger, subdivision (a)
23 of Section 17551.

24 (6) Any other details or provisions as are desired.

25 (c) Each membership of the same class of any
26 constituent corporation (other than the cancellation of
27 memberships owned, directly or indirectly, by a party to
28 the merger or its parent) shall, unless all members of the
29 class consent or unless the Commissioner of Corporations
30 has approved the terms and conditions of the transaction
31 and the fairness of those terms pursuant to Section 25142,
32 be treated equally with respect to any distribution of cash,
33 property, rights, or securities.

34 (d) Notwithstanding its prior approval, an agreement
35 of merger may be amended prior to the filing of the
36 agreement of merger if the amendment is approved by
37 each constituent corporation in the same manner as the
38 original agreement of merger. If the agreement of
39 merger as so amended and approved is also approved by
40 each of the other parties to the agreement of merger, as

1 ~~so amended it shall then constitute the agreement of~~
2 ~~merger.~~

3 ~~(e) The board of a constituent corporation may, in its~~
4 ~~discretion, abandon a merger, subject to the contractual~~
5 ~~rights, if any, of third parties, including other parties to~~
6 ~~the agreement of merger, without further approval by~~
7 ~~the members (Section 5034) or other persons, at any time~~
8 ~~before the merger is effective.~~

9 ~~(f) Each constituent corporation shall sign the~~
10 ~~agreement of merger by its chairperson of the board,~~
11 ~~president, or a vice president and also by its secretary or~~
12 ~~an assistant secretary acting on behalf of their respective~~
13 ~~corporations.~~

14 ~~(g) After required approvals of the merger by each~~
15 ~~constituent corporation and each other party to the~~
16 ~~merger, the surviving party shall file a copy of the~~
17 ~~agreement of merger with an officers' certificate of each~~
18 ~~constituent domestic and foreign and foreign business~~
19 ~~corporation attached stating the total number of~~
20 ~~outstanding shares or membership interests of each class~~
21 ~~entitled to vote on the merger (and identifying any other~~
22 ~~person or persons whose approval is required), that the~~
23 ~~principal terms of the agreement of merger in the form~~
24 ~~attached were approved by that corporation by a vote of~~
25 ~~a number of shares or membership interests of each class~~
26 ~~which equaled or exceeded the vote required, specifying~~
27 ~~each class entitled to vote and the percentage vote~~
28 ~~required of each class, and, if applicable, by the other~~
29 ~~person or persons whose approval is required.~~

30 ~~If equity securities of a parent party (Section 1200) are~~
31 ~~to be issued in the merger, the officers' certificate of the~~
32 ~~controlled party shall state either that no vote of the~~
33 ~~shareholders of the parent party was required or that the~~
34 ~~required vote was obtained. The merger and any~~
35 ~~amendment of the articles of the surviving corporation,~~
36 ~~if applicable, contained in the agreement of merger shall~~
37 ~~be effective upon the filing of the agreement of merger,~~
38 ~~subject to subdivision (i). The agreement of merger shall~~
39 ~~not be filed, however, until there has been filed by or on~~
40 ~~behalf of each party to the merger taxed under the Bank~~

1 and Corporation Tax Law, the existence of which is
2 terminated by the merger, the certificate of satisfaction
3 of the Franchise Tax Board that all taxes imposed by that
4 law have been paid or secured.

5 In lieu of an officers' certificate, a certificate of merger,
6 on a form prescribed by the Secretary of State, shall be
7 filed for each constituent other business entity. The
8 certificate of merger shall be executed and
9 acknowledged by each domestic constituent limited
10 liability company by all of the managers of the limited
11 liability company (unless a lesser number is specified in
12 its articles of organization or operating agreement) and
13 by each domestic constituent limited partnership by all
14 general partners (unless a lesser number is provided in
15 the certificate of limited partnership) and by each
16 domestic constituent general partnership by two
17 partners (unless a lesser number is provided in its
18 partnership agreement) and by each foreign constituent
19 limited liability company by one or more managers and
20 by each foreign constituent limited partnership by one or
21 more general partners, and by each constituent
22 reciprocal insurer by the chairperson of the board,
23 president, or vice president, and by the secretary or
24 assistant secretary, or, if a constituent reciprocal insurer
25 has not appointed any of those officers, by the chairperson
26 of the board, president, or vice president, and by the
27 secretary or assistant secretary of the constituent
28 reciprocal insurer's attorney-in-fact, and by each other
29 party to the merger by those persons required or
30 authorized to execute the certificate of merger by the
31 laws under which that party is organized, specifying for
32 that party the provision of law or other basis for the
33 authority of the signing persons.

34 The certificate of merger shall set forth, if a vote of the
35 shareholders, members, partners, or other holders of
36 interests of the constituent other business entity was
37 required, a statement setting forth the total number of
38 outstanding interests of each class entitled to vote on the
39 merger and that the principal terms of the agreement of
40 merger were approved by a vote of the number of

~~interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4, if a domestic general partnership is a party to the merger, subdivision (b) of Section 16915 and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552.~~

~~The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.~~

~~(h) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving party to the merger, the performance of the conditions necessary to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger, and of the merger of the constituent corporations, either by themselves or together with other constituent parties, into the surviving party to the merger.~~

~~(i) (1) The merger of domestic corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivisions (a) and (g) and this subdivision.~~

~~(2) Subject to subdivision (e) of Section 5008 and paragraph (3), the merger shall be effective as to each domestic constituent corporation and domestic constituent other business entity upon filing of the agreement of merger with attachments as provided in subdivision (g).~~

~~(3) If the surviving party is a foreign corporation or foreign business corporation or foreign other business~~

1 ~~entity, except as provided in paragraph (4), the merger~~
2 ~~shall be effective as to any domestic disappearing~~
3 ~~corporation as of the time of effectiveness in the foreign~~
4 ~~jurisdiction upon the filing in this state of a copy of the~~
5 ~~agreement of merger with an officers' certificate of the~~
6 ~~surviving foreign corporation and of each domestic~~
7 ~~constituent corporation and a certificate of merger of~~
8 ~~each constituent other business entity attached, which~~
9 ~~officers' certificates and certificates of merger shall~~
10 ~~conform to the requirements of subdivision (g).~~

11 ~~If one or more domestic other business entities is a~~
12 ~~disappearing party in a merger pursuant to this~~
13 ~~subdivision in which a foreign other business entity is the~~
14 ~~surviving entity, a certificate of merger required by the~~
15 ~~laws under which each domestic other business entity is~~
16 ~~organized, including subdivision (a) of Section 15678.4,~~
17 ~~subdivision (b) of Section 16915, or subdivision (a) of~~
18 ~~Section 17552, if applicable, shall also be filed at the same~~
19 ~~time as the filing of the agreement of merger.~~

20 ~~(4) If the date of the filing in this state pursuant to this~~
21 ~~subdivision is more than six months after the time of the~~
22 ~~effectiveness in the foreign jurisdiction, or if the powers~~
23 ~~of a domestic disappearing corporation are suspended at~~
24 ~~the time of effectiveness in the foreign jurisdiction, the~~
25 ~~merger shall be effective as to the domestic disappearing~~
26 ~~corporation as of the date of filing in this state.~~

27 ~~(5) Each foreign disappearing corporation that is~~
28 ~~qualified for the transaction of intrastate business shall~~
29 ~~automatically by the filing pursuant to subdivision (g)~~
30 ~~surrender its right to transact intrastate business as of the~~
31 ~~date of filing in this state or, if later, the effective date of~~
32 ~~the merger. With respect to each foreign disappearing~~
33 ~~other business entity previously registered for the~~
34 ~~transaction of intrastate business in this state, the filing of~~
35 ~~the agreement of merger pursuant to subdivision (g)~~
36 ~~automatically has the effect of a cancellation of~~
37 ~~registration for that foreign other business entity as of the~~
38 ~~date of filing in this state or, if later, the effective date of~~
39 ~~the merger, without the necessity of the filing of a~~
40 ~~certificate of cancellation.~~

1 ~~SEC. 22. Section 8020 of the Corporations Code is~~
2 ~~amended to read:~~

3 ~~8020. (a) Upon merger pursuant to this chapter the~~
4 ~~separate existence of the disappearing corporations~~
5 ~~ceases and the surviving domestic corporation, foreign~~
6 ~~corporation, or other business entity shall succeed,~~
7 ~~without other transfer, to all the rights and property of~~
8 ~~each of the disappearing corporations and shall be subject~~
9 ~~to all the debts and liabilities of each and trust obligations~~
10 ~~upon the property of a disappearing corporation in the~~
11 ~~same manner as if the surviving corporation or other~~
12 ~~business entity had itself incurred them.~~

13 ~~(b) All rights of creditors and all liens and trusts upon~~
14 ~~or arising from the property of each of the constituent~~
15 ~~corporations shall be preserved unimpaired, provided~~
16 ~~that the liens and trust obligations upon property of a~~
17 ~~disappearing corporation shall be limited to the property~~
18 ~~affected thereby immediately prior to the time the~~
19 ~~merger is effective.~~

20 ~~(c) Any action or proceeding pending by or against~~
21 ~~any disappearing corporation may be prosecuted to~~
22 ~~judgment, which shall bind the surviving party to the~~
23 ~~merger, or the surviving party to the merger may be~~
24 ~~proceeded against or substituted in its place.~~

25 ~~SEC. 23. Section 8021 of the Corporations Code is~~
26 ~~amended to read:~~

27 ~~8021. Whenever a domestic or foreign or foreign~~
28 ~~business corporation or other business entity (Section~~
29 ~~174.5) having any real property in this state merges with~~
30 ~~another domestic or foreign or foreign business~~
31 ~~corporation or other business entity pursuant to the laws~~
32 ~~of this state or of the state or place in which any~~
33 ~~constituent party to the merger was organized, and the~~
34 ~~laws of the state or place of organization (including this~~
35 ~~state) of any disappearing party to the merger provide~~
36 ~~substantially that the making and filing of the agreement~~
37 ~~of merger vests in the surviving party to the merger all~~
38 ~~the real property of any disappearing party to the~~
39 ~~merger, the filing for record in the office of the county~~
40 ~~recorder of any county in this state in which any of the~~

1 real property of that disappearing party to the merger is
2 located of either (a) a certificate prescribed by the
3 Secretary of State, or (b) a copy of the agreement of
4 merger or certificate of merger, certified by the
5 Secretary of State or an authorized public official of the
6 state or place pursuant to the laws of which the merger
7 is effected, shall evidence record ownership in the
8 surviving party to the merger of all interest of that
9 disappearing party to the merger in and to the real
10 property located in that county.

11 SEC. 24. Section 8022 of the Corporations Code is
12 amended to read:

13 8022. Any bequest, devise, gift, grant, or promise
14 contained in a will or other instrument of donation,
15 subscription, or conveyance, which is made to a
16 constituent corporation and which takes effect or
17 remains payable after the merger, inures to the surviving
18 party to the merger.

19 SEC. 25. Section 9640 of the Corporations Code is
20 amended to read:

21 9640. (a) The provisions of Chapter 10 (commencing
22 with Section 6010) of Part 2 apply to religious
23 corporations except subdivision (a) of Section 6010 and
24 Sections 6011 and 6012.

25 (b) A corporation may merge with any domestic
26 corporation, foreign corporation, or other business entity
27 (Section 174.5). However, without the prior written
28 consent of the Attorney General, a religious corporation
29 may only merge with another religious corporation or
30 with a public benefit corporation or a foreign nonprofit
31 corporation the articles of which provide that its assets are
32 irrevocably dedicated to charitable, religious, or public
33 purposes.

34 (c) The principal terms of the merger shall be
35 approved by the members (Section 5034) of each class of
36 each constituent corporation and by each other person or
37 persons whose approval of an amendment of articles is
38 required by the articles or bylaws; and the approval by
39 the members (Section 5034) or any other person or

1 ~~persons required by this section may be given before or~~
2 ~~after the approval by the board.~~

3 ~~(d) The board of each corporation that desires to~~
4 ~~merge shall approve an agreement of merger. The~~
5 ~~constituent corporations shall be parties to the agreement~~
6 ~~of merger and other persons may be parties to the~~
7 ~~agreement of merger. The agreement shall state all of the~~
8 ~~following:~~

9 ~~(1) The terms and conditions of the merger.~~

10 ~~(2) The amendments, subject to Sections 5810 and~~
11 ~~5816, to the articles of the surviving corporation to be~~
12 ~~effected by the merger, if any. If any amendment changes~~
13 ~~the name of the surviving corporation, the new name~~
14 ~~may be the same as or similar to the name of a~~
15 ~~disappearing corporation, subject to subdivision (b) of~~
16 ~~Section 9122.~~

17 ~~(3) The amendments to the bylaws of the surviving~~
18 ~~corporation to be effected by the merger, if any.~~

19 ~~(4) The name and place of incorporation of each~~
20 ~~constituent corporation and which of the constituent~~
21 ~~corporations is the surviving corporation.~~

22 ~~(5) The manner, if any, of converting memberships of~~
23 ~~the constituent corporations into memberships of the~~
24 ~~surviving corporation.~~

25 ~~(6) Any other details or provisions as are desired, if~~
26 ~~any.~~

27 ~~SEC. 26. Section 12530 of the Corporations Code is~~
28 ~~amended to read:~~

29 ~~12530. Any corporation may merge with another~~
30 ~~domestic corporation, or foreign corporation, or other~~
31 ~~business entity (Section 174.5). However, a merger with~~
32 ~~a public benefit corporation or a religious corporation~~
33 ~~must have the prior written consent of the Attorney~~
34 ~~General.~~

35 ~~SEC. 27. Section 12540.1 is added to the Corporations~~
36 ~~Code, to read:~~

37 ~~12540.1. (a) Any one or more corporations may~~
38 ~~merge with one or more other business entities (Section~~
39 ~~174.5). Subject to Section 12530, one or more other~~
40 ~~domestic corporations or foreign corporations (Section~~

~~12237) may be parties to the merger. Notwithstanding the provisions of this section, those mergers may be effected only if the following requirements have been met:~~

~~(1) In a merger in which a domestic corporation or domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.~~

~~(2) In a merger in which a foreign corporation is a party, it is authorized by the laws under which it is organized to effect the merger.~~

~~(3) In a merger in which a foreign other business entity is the surviving party, the laws of the jurisdiction under which it is organized authorize the merger.~~

~~(4) In a merger in which a foreign other business entity is a disappearing party, it is not prohibited by the laws under which it is organized from effecting the merger.~~

~~(b) Each corporation and each other party that desires to merge shall approve an agreement of merger. The board and the members of each corporation that desires to merge shall approve (Sections 12222 and 12224) the agreement of merger. The agreement of merger shall be approved on behalf of each other constituent party by those persons authorized or required to approve the merger by the laws under which it is organized.~~

~~The parties desiring to merge shall be parties to the agreement of merger and other persons, including a parent party (Section 1200), may be parties to the agreement of merger. The agreement of merger shall state:~~

~~(1) The terms and conditions of the merger.~~

~~(2) The name and place of incorporation or organization of each party and the identity of the surviving party.~~

~~(3) The amendments, if any, subject to Sections 12500 and 12507, to the articles of the surviving corporation, if applicable, to be effected by the merger. The name of the surviving corporation may be, subject to subdivision (c)~~

1 of Section 12302, the same as or similar to the name of a
2 disappearing party to the merger.

3 (4) The manner, if any, of converting the
4 memberships or securities of each of the constituent
5 corporations into shares, memberships, interests, or other
6 securities of the surviving party and, if any memberships
7 or securities of any of the constituent corporations are not
8 to be converted solely into shares, memberships,
9 interests, or other securities of the surviving party, the
10 cash, rights, securities, or other property that the holders
11 of those memberships or securities are to receive in
12 exchange for the memberships or securities, which cash,
13 rights, securities, or other property may be in addition to
14 or in lieu of shares, memberships, interests, or other
15 securities of the surviving party.

16 (5) Any other details or provisions as are required by
17 the laws under which any party to the merger is
18 organized, including, if a domestic limited partnership is
19 a party to the merger, subdivision (a) of Section 15678.2,
20 or, if a domestic general partnership is a party to the
21 merger, subdivision (a) of Section 16911, or, if a domestic
22 limited liability company is a party to the merger,
23 subdivision (a) of Section 17551.

24 (6) Any other details or provisions as are desired.

25 (c) Each membership of the same class of any
26 constituent corporation (other than the cancellation of
27 memberships owned, directly or indirectly, by a party to
28 the merger or its parent) shall, unless all members of the
29 class consent or unless the Commissioner of Corporations
30 has approved the terms and conditions of the transaction
31 and the fairness of those terms pursuant to Section 25142,
32 be treated equally with respect to any distribution of cash,
33 property, rights, or securities.

34 (d) Notwithstanding its prior approval, an agreement
35 of merger may be amended prior to the filing of the
36 agreement of merger if the amendment is approved by
37 each constituent corporation in the same manner as the
38 original agreement of merger. If the agreement of
39 merger as so amended and approved is also approved by
40 each of the other parties to the agreement of merger, as

1 ~~so amended it shall then constitute the agreement of~~
2 ~~merger.~~

3 ~~(e) The board of a constituent corporation may, in its~~
4 ~~discretion, abandon a merger, subject to the contractual~~
5 ~~rights, if any, of third parties, including other parties to~~
6 ~~the agreement of merger, without further approval by~~
7 ~~the members (Section 12224), at any time before the~~
8 ~~merger is effective.~~

9 ~~(f) Each constituent corporation shall sign the~~
10 ~~agreement of merger by its chairperson of the board, its~~
11 ~~president or a vice president, and also by its secretary or~~
12 ~~an assistant secretary acting on behalf of their respective~~
13 ~~corporations.~~

14 ~~(g) After required approvals of the merger by each~~
15 ~~constituent corporation and each other party to the~~
16 ~~merger, the surviving party shall file a copy of the~~
17 ~~agreement of merger with an officers' certificate of each~~
18 ~~constituent domestic and foreign corporation attached~~
19 ~~stating the total number of outstanding shares or~~
20 ~~membership interests of each class entitled to vote on the~~
21 ~~merger (and identifying any other person or persons~~
22 ~~whose approval is required), that the principal terms of~~
23 ~~the agreement of merger in the form attached were~~
24 ~~approved by that corporation by a vote of a number of~~
25 ~~shares or membership interests of each class that equaled~~
26 ~~or exceeded the vote required, specifying each class~~
27 ~~entitled to vote and the percentage vote required of each~~
28 ~~class, and, if applicable, by the other person or persons~~
29 ~~whose approval is required.~~

30 ~~If equity securities of a parent party (Section 1200) are~~
31 ~~to be issued in the merger, the officers' certificate of the~~
32 ~~controlled party shall state either that no vote of the~~
33 ~~shareholders of the parent party was required or that the~~
34 ~~required vote was obtained. The merger and any~~
35 ~~amendment of the articles of the surviving corporation,~~
36 ~~if applicable, contained in the agreement of merger shall~~
37 ~~be effective upon the filing of the agreement of merger,~~
38 ~~subject to subdivision (i). The agreement of merger shall~~
39 ~~not be filed, however, until there has been filed by or on~~
40 ~~behalf of each party to the merger taxed under the Bank~~

1 and Corporation Tax Law, the existence of which is
2 terminated by the merger, the certificate of satisfaction
3 of the Franchise Tax Board that all taxes imposed by that
4 law have been paid or secured.

5 In lieu of an officers' certificate, a certificate of merger,
6 on a form prescribed by the Secretary of State, shall be
7 filed for each constituent other business entity. The
8 certificate of merger shall be executed and
9 acknowledged by each domestic constituent limited
10 liability company by all of the managers of the limited
11 liability company (unless a lesser number is specified in
12 its articles of organization or operating agreement) and
13 by each domestic constituent limited partnership by all
14 general partners (unless a lesser number is provided in
15 the certificate of limited partnership) and by each
16 domestic constituent general partnership by two
17 partners (unless a lesser number is provided in its
18 partnership agreement) and by each foreign constituent
19 limited liability company by one or more managers and
20 by each foreign constituent limited partnership by one or
21 more general partners, and by each constituent
22 reciprocal insurer by the chairperson of the board,
23 president, or vice president, and by the secretary or
24 assistant secretary, or, if a constituent reciprocal insurer
25 has not appointed any of those officers, by the chairperson
26 of the board, president, or vice president, and by the
27 secretary or assistant secretary of the constituent
28 reciprocal insurer's attorney-in-fact, and by each other
29 party to the merger by those persons required or
30 authorized to execute the certificate of merger by the
31 laws under which that party is organized, specifying for
32 that party the provision of law or other basis for the
33 authority of the signing persons.

34 The certificate of merger shall set forth, if a vote of the
35 shareholders, members, partners, or other holders of
36 interests of the constituent other business entity was
37 required, a statement setting forth the total number of
38 outstanding interests of each class entitled to vote on the
39 merger and that the agreement of merger or its principal
40 terms, as required, were approved by a vote of the

~~1 number of interests of each class that equaled or
2 exceeded the vote required, specifying each class entitled
3 to vote and the percentage vote required of each class,
4 and any other information required to be set forth under
5 the laws under which the constituent other business
6 entity is organized, including, if a domestic limited
7 partnership is a party to the merger, subdivision (a) of
8 Section 15678.4, if a domestic general partnership is a
9 party to the merger, subdivision (b) of Section 16915 and,
10 if a domestic limited liability company is a party to the
11 merger, subdivision (a) of Section 17552.~~

~~12 The Secretary of State may certify a copy of the
13 agreement of merger separate from the officers'
14 certificates and certificates of merger attached thereto.~~

~~15 (h) A copy of an agreement of merger certified on or
16 after the effective date by an official having custody
17 thereof has the same force in evidence as the original and,
18 except as against the state, is conclusive evidence of the
19 performance of all conditions precedent to the merger,
20 the existence on the effective date of the surviving party
21 to the merger, the performance of the conditions
22 necessary to the adoption of any amendment to the
23 articles, if applicable, contained in the agreement of
24 merger, and of the merger of the constituent
25 corporations, either by themselves or together with other
26 constituent parties, into the surviving party to the
27 merger.~~

~~28 (i) (1) The merger of domestic corporations with
29 foreign corporations or foreign other business entities in
30 a merger in which one or more other business entities is
31 a party shall comply with subdivisions (a) and (g) and this
32 subdivision.~~

~~33 (2) Subject to subdivision (e) of Section 12214 and
34 paragraph (3), the merger shall be effective as to each
35 domestic constituent corporation and domestic
36 constituent other business entity upon filing of the
37 agreement of merger with attachments as provided in
38 subdivision (g).~~

~~39 (3) If the surviving party is a foreign corporation or
40 foreign other business entity, except as provided in~~

1 paragraph (4), the merger shall be effective as to any
2 domestic disappearing corporation as of the time of
3 effectiveness in the foreign jurisdiction upon the filing in
4 this state of a copy of the agreement of merger with an
5 officers' certificate of the surviving foreign corporation
6 and of each domestic constituent corporation and a
7 certificate of merger of each constituent other business
8 entity attached, which officers' certificates and
9 certificates of merger shall conform to the requirements
10 of subdivision (g).

11 If one or more domestic other business entities is a
12 disappearing party in a merger pursuant to this
13 subdivision in which a foreign other business entity is the
14 surviving entity, a certificate of merger required by the
15 laws under which each domestic other business entity is
16 organized, including subdivision (a) of Section 15678.4,
17 subdivision (b) of Section 16915, or subdivision (a) of
18 Section 17552, if applicable, shall also be filed at the same
19 time as the filing of the agreement of merger.

20 (4) If the date of the filing in this state pursuant to this
21 subdivision is more than six months after the time of the
22 effectiveness in the foreign jurisdiction, or if the powers
23 of a domestic disappearing corporation are suspended at
24 the time of effectiveness in the foreign jurisdiction, the
25 merger shall be effective as to the domestic disappearing
26 corporation as of the date of filing in this state.

27 (5) Each foreign disappearing corporation that is
28 qualified for the transaction of intrastate business shall
29 automatically by the filing pursuant to subdivision (g)
30 surrender its right to transact intrastate business as of the
31 date of filing in this state or, if later, the effective date of
32 the merger. With respect to each foreign disappearing
33 other business entity previously registered for the
34 transaction of intrastate business in this state, the filing of
35 the agreement of merger pursuant to subdivision (g)
36 automatically has the effect of a cancellation of
37 registration for that foreign other business entity as of the
38 date of filing in this state or, if later, the effective date of
39 the merger, without the necessity of the filing of a
40 certificate of cancellation.

~~SEC. 28. Article 7.4 (commencing with Section 15677.1) is added to Chapter 3 of Title 2 of the Corporations Code, to read:~~

~~Article 7.4. Conversion~~

~~15677.1. For purposes of this article, the following definitions shall apply:~~

~~(a) “Converted entity” means the other business entity or foreign partnership that results from a conversion of a domestic limited partnership under this chapter.~~

~~(b) “Converted partnership” means a domestic partnership that results from a conversion of an other business entity or a foreign limited partnership pursuant to the provisions of Section 15677.8.~~

~~(c) “Converting limited partnership” means a domestic limited partnership that converts to an other business entity or a foreign limited partnership pursuant to this chapter.~~

~~(d) “Converting entity” means an other business entity or foreign limited partnership that converts to a domestic limited partnership pursuant to the terms of Section 15677.8.~~

~~15677.2. A limited partnership may be converted into an other business entity or a foreign limited partnership pursuant to this article if, pursuant to the proposed conversion, each of the partners of the converting limited partnership would receive a percentage interest in the profits and capital of the converted entity equal to that partner’s percentage interest in profits and capital of the converting limited partnership as of the effective time of the conversion. Notwithstanding this section, the conversion of a limited partnership to an other business entity or a foreign limited partnership may be effected only if both of the following are met:~~

~~(a) The law under which the converted entity will exist expressly permits the formation of the other entity pursuant to a conversion.~~

1 ~~(b) The limited partnership complies with all other~~
2 ~~requirements of any other law that applies to conversion~~
3 ~~of the converted entity.~~

4 ~~15677.3. (a) A limited partnership that desires to~~
5 ~~convert to an other business entity or a foreign limited~~
6 ~~partnership shall approve a plan of conversion. The plan~~
7 ~~of conversion shall state all of the following:~~

8 ~~(1) The terms and conditions of the conversion.~~

9 ~~(2) The place of the organization of the converted~~
10 ~~entity and of the converting limited partnership and the~~
11 ~~name of the converted entity after conversion.~~

12 ~~(3) The manner of converting the limited and general~~
13 ~~partnership interests of each of the partners into~~
14 ~~securities of, or interests in, the converted entity.~~

15 ~~(4) The provisions of the governing documents for the~~
16 ~~converted entity, such as a partnership agreement or~~
17 ~~limited liability company articles of organization and~~
18 ~~operating agreement, to which the holders of interests in~~
19 ~~the converted entity are to be bound.~~

20 ~~(5) Any other details or provisions that are required by~~
21 ~~the laws under which the converted entity is organized,~~
22 ~~or that are desired by the parties.~~

23 ~~(b) The plan of conversion shall be approved by all~~
24 ~~general partners of the converting limited partnership~~
25 ~~and by a majority in interest of each class of limited~~
26 ~~partners of the converting limited partnership, unless a~~
27 ~~greater approval is required by the partnership~~
28 ~~agreement of the converting limited partnership.~~
29 ~~Notwithstanding the previous sentence, if the limited~~
30 ~~partners of the limited partnership would become~~
31 ~~personally liable for any obligations of the converted~~
32 ~~entity as a result of the conversion, the plan of conversion~~
33 ~~shall be approved by all of the limited partners of the~~
34 ~~converting limited partnership, unless the plan of~~
35 ~~conversion provides that all limited partners will have the~~
36 ~~dissenters' rights provided in Article 7.6 (commencing~~
37 ~~with Section 15679.1).~~

38 ~~(c) Upon effectiveness of the conversion, all partners~~
39 ~~of the converting limited partnership except those that~~
40 ~~exercise dissenters' rights as provided in Article 7.6~~

~~(commencing with Section 15679.1), shall be deemed parties to any governing documents for the converted entity adopted as part of the plan of conversion, regardless of whether the partner has executed the plan of conversion or the governing documents for the converted entity. Any adoption of governing documents made pursuant to the foregoing sentence shall be effective at the effective time or date of the conversion.~~

~~(d) Notwithstanding its prior approval, a plan of conversion may be amended before the conversion takes effect if the amendment is approved by all general partners of the converting limited partnership and, if the amendment changes any of the principal terms of the plan of conversion, the amendment is approved by the limited partners of the converting limited partnership in the same manner and to the same extent as required for the approval of the original plan of conversion.~~

~~(e) The general partners of a converting limited partnership may, by unanimous approval at any time before the conversion is effective, in their discretion, abandon a conversion, without further approval by the limited partners, subject to the contractual rights of third parties other than limited partners.~~

~~(f) The converted entity shall keep the plan of conversion at the principal place of business of the converted entity if the converted entity is a domestic partnership or foreign other business entity or at the office at which records are to be kept under Section 17057 if the converted entity is a domestic limited liability company. Upon the request of a partner of a converting limited partnership, the authorized person on behalf of the converted entity shall promptly deliver to the partner or the holder of interests or other securities, at the expense of the converted entity, a copy of the plan of conversion. A waiver by a partner of the rights provided in this subdivision shall be unenforceable.~~

~~15677.4. (a) A conversion into a company, other business entity, or a foreign limited partnership company shall become effective upon the earliest date that all of the following shall have occurred:~~

1 ~~(1) The approval of the plan of conversion by the~~
2 ~~partners of the converting limited partnership as~~
3 ~~provided in Section 15677.3.~~

4 ~~(2) The filing of all documents required by law to~~
5 ~~create the converted entity, which documents shall also~~
6 ~~contain a statement of conversion, if required under~~
7 ~~Section 15677.6.~~

8 ~~(3) The effective date, if set forth in the plan of~~
9 ~~conversion, shall have occurred.~~

10 ~~(b) A copy of the statement of partnership authority~~
11 ~~or articles of organization complying with Section~~
12 ~~15677.6, if applicable, duly certified by the Secretary of~~
13 ~~State, is conclusive evidence of the conversion of the~~
14 ~~limited partnership.~~

15 ~~15677.5. (a) The conversion of a limited partnership~~
16 ~~into a foreign limited partnership or foreign other~~
17 ~~business entity shall be required to comply with Section~~
18 ~~15677.2.~~

19 ~~(b) If the limited partnership is converting into a~~
20 ~~foreign limited partnership or foreign other business~~
21 ~~entity, then the conversion proceedings shall be in~~
22 ~~accordance with the laws of the state or place of~~
23 ~~organization of the foreign limited partnership or foreign~~
24 ~~other business entity and the conversion shall become~~
25 ~~effective in accordance with such law.~~

26 ~~(c) (1) To enforce an obligation of a limited~~
27 ~~partnership that has converted to a foreign entity, the~~
28 ~~Secretary of State shall only be the agent for service of~~
29 ~~process in an action or proceeding against the converted~~
30 ~~foreign other business entity, if the agent designated for~~
31 ~~the service of process for the entity is a natural person and~~
32 ~~cannot be found with due diligence or if the agent is a~~
33 ~~corporation and no person, to whom delivery may be~~
34 ~~made, can be found with due diligence, or if no agent has~~
35 ~~been designated and if no one of the officers, partners,~~
36 ~~managers, members, or agents of the entity can be found~~
37 ~~after diligent search, and it is so shown by affidavit to the~~
38 ~~satisfaction of the court. The court then may make an~~
39 ~~order that service be made by personal delivery to the~~
40 ~~Secretary of State or to an assistant or deputy secretary of~~

~~1 state of two copies of the process together with two copies
2 of the order, and the order shall set forth an address to
3 which the process shall be sent by the Secretary of State.
4 Service in this manner is deemed complete on the 10th
5 day after delivery of the process to the Secretary of State.~~

~~6 (2) Upon receipt of the process and order and the fee
7 set forth in Section 12206 of the Government Code, the
8 Secretary of State shall give notice to the entity of the
9 service of the process by forwarding by certified mail,
10 return receipt requested, a copy of the process and order
11 to the address specified in the order.~~

~~12 (3) The Secretary of State shall keep a record of all
13 process served upon the Secretary of State and shall
14 record therein the time of service and the Secretary of
15 State's action with respect thereto. The certificate of the
16 Secretary of State, under the Secretary of State's official
17 seal, certifying to the receipt of process the giving of
18 notice thereof to the entity, and the forwarding of the
19 process shall be competent and prima facie evidence of
20 the matters stated therein.~~

~~21 15677.6. (a) Upon conversion of a limited
22 partnership: (1) if the limited partnership is converting
23 into a domestic limited liability company, a statement of
24 conversion shall be completed on the articles of
25 organization for the converted entity; (2) if the limited
26 partnership is converting into a domestic partnership, a
27 statement of conversion shall be completed on the
28 statement of partnership authority for the converted
29 entity, or if no statement of partnership authority is filed,
30 then a certificate of conversion must be filed separately;
31 and (3) if the limited partnership is converting to a
32 foreign limited liability company or foreign other
33 business entity, a certificate of conversion shall be filed
34 with the Secretary of State.~~

~~35 (b) Any certificate or statement of conversion shall be
36 executed and acknowledged by all general partners;
37 unless a lesser number is provided in the certificate of
38 limited partnership, and shall set forth all of the following:~~

~~39 (1) The name and the Secretary of State's file number
40 of the converting limited partnership.~~

1 ~~(2) A statement that the principal terms of the plan of~~
2 ~~conversion were approved by a vote of the partners,~~
3 ~~which equaled or exceeded the vote required under~~
4 ~~Section 15677.3, specifying each class entitled to vote and~~
5 ~~the percentage vote required of each class.~~

6 ~~(3) The form of organization of the converted entity.~~

7 ~~(4) The mailing address of the converted entity's~~
8 ~~agent for service of process and the chief executive office~~
9 ~~of the converted entity.~~

10 ~~15677.7. (a) Whenever a limited partnership or other~~
11 ~~business entity having any real property in this state~~
12 ~~converts into a limited partnership or an other business~~
13 ~~entity pursuant to the laws of this state or of the state or~~
14 ~~place in which the other business entity was organized,~~
15 ~~and the laws of the state or place of organization,~~
16 ~~including this state, of the converting limited partnership~~
17 ~~or other business entity provide substantially that the~~
18 ~~conversion of a converting entity vests in the converted~~
19 ~~entity all the real property of the converting limited~~
20 ~~partnership or converting other business entity, the filing~~
21 ~~for record in the office of the county recorder of any~~
22 ~~county in this state in which any of the real property of~~
23 ~~the converting limited partnership or converting other~~
24 ~~business entity is located of either (1) a certificate of~~
25 ~~conversion or statement of partnership authority, or a~~
26 ~~certificate of limited partnership or articles of~~
27 ~~organization complying with Section 15677.6, in the form~~
28 ~~prescribed and certified by the Secretary of State, or (2)~~
29 ~~a copy of a certificate of conversion, statement of~~
30 ~~partnership authority, certificate of limited partnership~~
31 ~~or articles of organization or other certificate evidencing~~
32 ~~the creation of a foreign other business entity by~~
33 ~~conversion containing a statement of conversion certified~~
34 ~~by the Secretary of State or an authorized public official~~
35 ~~of the state or place pursuant to the laws of which the~~
36 ~~conversion is effected, shall evidence record ownership~~
37 ~~in the converted limited partnership or converted entity~~
38 ~~of all interest of the converting limited partnership or~~
39 ~~converting other business entity in and to the real~~
40 ~~property located in that county.~~

~~(b) A filed and, if appropriate, recorded certificate of conversion, statement of partnership authority, certificate of limited partnership or articles of organization, or other certificate evidencing the creation of a foreign other business entity by conversion containing a statement of conversion, filed pursuant to subdivision (a) of Section 15677.6, stating the name of the converting limited partnership or converting other business entity in whose name property was held before the conversion and the name of the converted entity, but not containing all of the other information required by Section 15677.6, operates with respect to the entities named to the extent provided in subdivision (a).~~

~~(c) Recording of a certificate of conversion, statement of partnership authority, certificate of limited partnership or articles of organization containing a statement of conversion, or articles of organization containing a statement of conversion, or other certificate evidencing the creation of an other business entity by conversion or other certificate evidencing the creation of an other business entity by conversion, in accordance with subdivision (a) shall create, in favor of bona fide purchasers or encumbrances for value, a conclusive presumption that the conversion was validly completed.~~

~~15677.8. (a) An entity other business entity or a foreign limited partnership entity may be converted to a domestic limited partnership pursuant to this article, but only if the converting entity is not prohibited by the laws under which it is organized to effect the conversion.~~

~~(b) An entity that desires to convert into a domestic limited partnership shall approve a plan of conversion or an instrument as is required to be approved to effect the conversion pursuant to the laws under which the entity is organized.~~

~~(c) The conversion of a other business entity or a foreign limited partnership shall be approved by the number or percentage of the partners, members, or holders of interest of the converting entity as is required by the law under which the entity is organized, or greater percentage, or lesser percentage subject to applicable~~

1 ~~laws, as set forth in the partnership agreement, articles of~~
2 ~~organization, operating agreement, or other governing~~
3 ~~document evidencing the creation of an other business~~
4 ~~entity or foreign limited partnership in accordance with~~
5 ~~subdivision (a):~~

6 ~~(d) The conversion by an other business entity or a~~
7 ~~foreign limited partnership into a domestic limited~~
8 ~~partnership shall be effective under this article at the~~
9 ~~time the conversion is effective under the law under~~
10 ~~which the converting entity is organized as long as a~~
11 ~~certificate of limited partnership has been filed with the~~
12 ~~Secretary of State.~~

13 ~~15677.9. (a) An entity that converts into another~~
14 ~~entity pursuant to this article is for all purposes the same~~
15 ~~entity that existed before the conversion.~~

16 ~~(b) When a conversion takes effect, all of the following~~
17 ~~apply:~~

18 ~~(1) All the rights and property, whether real, personal,~~
19 ~~or mixed, of the converting entity remains vested in the~~
20 ~~converted entity.~~

21 ~~(2) All debts, liabilities, and obligations of the~~
22 ~~converting entity continue as debts, liabilities, and~~
23 ~~obligations of the converted entity.~~

24 ~~(3) All rights of creditors and liens upon the property~~
25 ~~of the converting entity shall be preserved unimpaired~~
26 ~~and remain enforceable against the converted entity to~~
27 ~~the same extent as against the converting entity as if the~~
28 ~~conversion had not occurred.~~

29 ~~(4) Any action or proceeding pending by or against~~
30 ~~the converting entity may be continued against the~~
31 ~~converted entity as if the conversion had not occurred.~~

32 ~~(c) A partner of a converting limited partnership is~~
33 ~~liable for:~~

34 ~~(1) All obligations of the converting limited~~
35 ~~partnership for which the partner was personally liable~~
36 ~~before the conversion.~~

37 ~~(2) All obligations of the converted entity incurred~~
38 ~~after the conversion takes effect, but those obligations~~
39 ~~may be satisfied only out of property of the entity if the~~
40 ~~converted entity is a limited liability company and the~~

~~partner becomes a member, unless the articles of organization or the operating agreement of the limited liability company provide otherwise.~~

~~(d) A partner of a limited partnership that converted from an other business entity remains liable for any and all obligations of the converting other business entity for which the partner was personally liable before the conversion, but only to the extent that the partner was liable for the obligations of the other business entity or foreign limited partnership prior to the conversion.~~

~~SEC. 29. Section 15679.1 of the Corporations Code is amended to read:~~

~~15679.1. (a) For purposes of this article, “reorganization” refers to either of the following:~~

~~(1) A conversion pursuant to Article 7.4 (commencing with Section 15677.1).~~

~~(2) A merger pursuant to Article 7.5 (commencing with Section 15678.1).~~

~~(3) The acquisition by one limited partnership in exchange, in whole or part, for its partnership interests (or the partnership interests or equity securities of a partnership or other business entity that is in control of the acquiring limited partnership) of partnership interests or equity securities of another limited partnership or other business entity if, immediately after the acquisition, the acquiring limited partnership has control of the other limited partnership or other business entity.~~

~~(4) The acquisition by one limited partnership in exchange, in whole or in part, for its partnership interests (or the partnership interests or equity securities of a partnership or other business entity which is in control of the acquiring limited partnership) or for its debts securities (or debt securities of a limited partnership or other business entity which is in control of the acquiring limited partnership) which are not adequately secured and which have a maturity date in excess of five years after the consummation of the acquisition, or both, of all or substantially all of the assets of another limited partnership or other business entity.~~

1 ~~(b) For purposes of this article, “control” means the~~
2 ~~possession, direct or indirect, of the power to direct or~~
3 ~~cause the direction of the management and policies of a~~
4 ~~limited partnership or other business entity.~~

5 ~~SEC. 30. Section 16101 of the Corporations Code is~~
6 ~~amended to read:~~

7 ~~16101. As used in this chapter, the following terms and~~
8 ~~phrases have the following meanings:~~

9 ~~(1) “Business” includes every trade, occupation, and~~
10 ~~profession.~~

11 ~~(2) “Debtor in bankruptcy” means a person who is the~~
12 ~~subject of either of the following:~~

13 ~~(A) An order for relief under Title 11 of the United~~
14 ~~States Code or a comparable order under a successor~~
15 ~~statute of general application.~~

16 ~~(B) A comparable order under federal, state, or~~
17 ~~foreign law governing insolvency.~~

18 ~~(3) “Distribution” means a transfer of money or other~~
19 ~~property from a partnership to a partner in the partner’s~~
20 ~~capacity as a partner or to the partner’s transferee.~~

21 ~~(4) (A) “Foreign limited liability partnership” means~~
22 ~~a partnership, other than a limited partnership, formed~~
23 ~~pursuant to an agreement governed by the laws of~~
24 ~~another jurisdiction and denominated or registered as a~~
25 ~~limited liability partnership or registered limited liability~~
26 ~~partnership under the laws of that jurisdiction (i) in~~
27 ~~which each partner is a licensed person or a person~~
28 ~~licensed or authorized to provide professional limited~~
29 ~~liability partnership services in a jurisdiction or~~
30 ~~jurisdictions other than this state, (ii) which is licensed~~
31 ~~under the laws of the state to engage in the practice of~~
32 ~~public accountancy or the practice of law, or (iii) which~~
33 ~~(I) is related to a registered limited liability partnership~~
34 ~~that practices public accountancy or, to the extent~~
35 ~~permitted by this State Bar, practices law or is related to~~
36 ~~a foreign limited liability partnership and (II) provides~~
37 ~~services related or complementary to the professional~~
38 ~~limited liability partnership services provided by, or~~
39 ~~provides services or facilities to, that registered limited~~

1 ~~liability partnership or foreign limited liability~~
2 ~~partnership.~~

3 ~~(B) For the purposes of clause (iii) of subparagraph~~
4 ~~(A), a partnership is related to a registered limited~~
5 ~~liability partnership or foreign limited liability~~
6 ~~partnership if (i) at least a majority of the partners in one~~
7 ~~partnership are also partners in the other partnership, or~~
8 ~~(ii) at least a majority in interest in each partnership hold~~
9 ~~interests in or are members of another person, except an~~
10 ~~individual, and each partnership renders services~~
11 ~~pursuant to an agreement with that other person, or (iii)~~
12 ~~one partnership, directly or indirectly through one or~~
13 ~~more intermediaries, controls, is controlled by, or is under~~
14 ~~common control with, the other partnership.~~

15 ~~(5) “Licensed person” means any person who is duly~~
16 ~~licensed, authorized, or registered under the provisions~~
17 ~~of the Business and Professions Code to provide~~
18 ~~professional limited liability partnership services or who~~
19 ~~is lawfully able to render professional limited liability~~
20 ~~partnership services in this state.~~

21 ~~(6) (A) “Registered limited liability partnership”~~
22 ~~means a partnership, other than a limited partnership,~~
23 ~~formed pursuant to an agreement governed by Article 10~~
24 ~~(commencing with Section 16951), that is registered~~
25 ~~under Section 16953 and (i) each of the partners of which~~
26 ~~is a licensed person or a person licensed or authorized to~~
27 ~~provide professional limited liability partnership services~~
28 ~~in a jurisdiction or jurisdictions other than this state, (ii)~~
29 ~~is licensed under the laws of the state to engage in the~~
30 ~~practice of public accountancy or the practice of law, or~~
31 ~~(iii)(I) is related to a registered limited liability~~
32 ~~partnership that practices public accountancy or, to the~~
33 ~~extent permitted by the State Bar, practices law or is~~
34 ~~related to a foreign limited liability partnership and (II)~~
35 ~~provides services related or complementary to the~~
36 ~~professional limited liability partnership services~~
37 ~~provided by, or provides services or facilities to, that~~
38 ~~registered limited liability partnership or foreign limited~~
39 ~~liability partnership.~~

1 ~~(B) For the purposes of clause (iii) of subparagraph~~
2 ~~(A), a partnership is related to a registered limited~~
3 ~~liability partnership or foreign limited liability~~
4 ~~partnership if (i) at least a majority of the partners in one~~
5 ~~partnership are also partners in the other partnership, or~~
6 ~~(ii) at least a majority in interest in each partnership hold~~
7 ~~interests in or are members of another person, other than~~
8 ~~an individual, and each partnership renders services~~
9 ~~pursuant to an agreement with that other person, or (iii)~~
10 ~~one partnership, directly or indirectly through one or~~
11 ~~more intermediaries, controls, is controlled by, or is under~~
12 ~~common control with, the other partnership.~~

13 ~~(7) “Partnership” means an association of two or more~~
14 ~~persons to carry on as coowners a business for profit~~
15 ~~formed under Section 16202, predecessor law, or~~
16 ~~comparable law of another jurisdiction, and includes, for~~
17 ~~all purposes of the laws of this state, a registered limited~~
18 ~~liability partnership, and excludes any partnership~~
19 ~~formed under Chapter 2 (commencing with Section~~
20 ~~15501) or Chapter 3 (commencing with Section 15611).~~

21 ~~(8) “Partnership agreement” means the agreement,~~
22 ~~whether written, oral, or implied, among the partners~~
23 ~~concerning the partnership, including amendments to~~
24 ~~the partnership agreement.~~

25 ~~(9) “Partnership at will” means a partnership in which~~
26 ~~the partners have not agreed to remain partners until the~~
27 ~~expiration of a definite term or the completion of a~~
28 ~~particular undertaking.~~

29 ~~(10) “Partnership interest” or “partner’s interest in~~
30 ~~the partnership” means all of a partner’s interests in the~~
31 ~~partnership, including the partner’s transferable interest~~
32 ~~and all management and other rights.~~

33 ~~(11) “Person” means an individual, corporation,~~
34 ~~business trust, estate, trust, partnership, limited~~
35 ~~partnership, limited liability partnership, limited liability~~
36 ~~company, association, joint venture, government,~~
37 ~~governmental subdivision, agency, or instrumentality, or~~
38 ~~any other legal or commercial entity.~~

1 ~~(12) “Professional limited liability partnership~~
2 ~~services” means the practice of public accountancy or the~~
3 ~~practice of law.~~

4 ~~(13) “Property” means all property, real, personal, or~~
5 ~~mixed, tangible or intangible, or any interest therein.~~

6 ~~(14) “State” means a state of the United States, the~~
7 ~~District of Columbia, the Commonwealth of Puerto Rico,~~
8 ~~or any territory or insular possession subject to the~~
9 ~~jurisdiction of the United States.~~

10 ~~(15) “Statement” means a statement of partnership~~
11 ~~authority under Section 16303, a statement of denial~~
12 ~~under Section 16304, a statement of dissociation under~~
13 ~~Section 16704, a statement of dissolution under Section~~
14 ~~16805, a statement of conversion under Section 16906, a~~
15 ~~statement of merger under Section 16915, or an~~
16 ~~amendment or cancellation of any of the foregoing.~~

17 ~~(16) “Transfer” includes an assignment, conveyance,~~
18 ~~lease, mortgage, deed, and encumbrance.~~

19 ~~SEC. 31. Section 16901 of the Corporations Code is~~
20 ~~amended to read:~~

21 ~~16901. In this article, the following terms have the~~
22 ~~following meanings:~~

23 ~~(1) “Constituent other business entity” means any~~
24 ~~other business entity that is merged with or into one or~~
25 ~~more partnerships and includes a surviving other~~
26 ~~business entity.~~

27 ~~(2) “Constituent partnership” means a partnership~~
28 ~~that is merged with or into one or more other~~
29 ~~partnerships or other business entities and includes a~~
30 ~~surviving partnership.~~

31 ~~(3) “Disappearing other business entity” means a~~
32 ~~constituent other business entity that is not the surviving~~
33 ~~other business entity.~~

34 ~~(4) “Disappearing partnership” means a constituent~~
35 ~~partnership that is not the surviving partnership.~~

36 ~~(5) “Domestic” means organized under the laws of~~
37 ~~this state when used in relation to any partnership, other~~
38 ~~business entity, or person (other than an individual).~~

39 ~~(6) “Foreign other business entity” means any other~~
40 ~~business entity formed under the laws of any state other~~

1 ~~than this state or under the laws of the United States or~~
2 ~~of a foreign country.~~

3 ~~(7) “Foreign partnership” means a partnership~~
4 ~~formed under the laws of any state other than this state~~
5 ~~or under the laws of a foreign country.~~

6 ~~(8) “General partner” means a partner in a~~
7 ~~partnership and a general partner in a limited~~
8 ~~partnership.~~

9 ~~(9) “Limited liability company” means a limited~~
10 ~~liability company created under Title 2.5 (commencing~~
11 ~~with Section 17000), or comparable law of another~~
12 ~~jurisdiction.~~

13 ~~(10) “Limited partner” means a limited partner in a~~
14 ~~limited partnership.~~

15 ~~(11) “Limited partnership” means a limited~~
16 ~~partnership created under Chapter 3 (commencing with~~
17 ~~Section 15611), predecessor law, or comparable law of~~
18 ~~another jurisdiction.~~

19 ~~(12) “Other business entity” means a limited~~
20 ~~partnership, limited liability company, corporation,~~
21 ~~business trust, real estate investment trust, or an~~
22 ~~unincorporated association (other than a nonprofit~~
23 ~~association), but excluding a partnership.~~

24 ~~(13) “Partner” includes both a general partner and a~~
25 ~~limited partner.~~

26 ~~(14) “Surviving other business entity” means an other~~
27 ~~business entity into which one or more partnerships are~~
28 ~~merged.~~

29 ~~(15) “Surviving partnership” means a partnership into~~
30 ~~which one or more other partnerships or other business~~
31 ~~entities are merged.~~

32 ~~SEC. 32. Section 16905 of the Corporations Code is~~
33 ~~amended to read:~~

34 ~~16905. (a) The conversion of a partnership into a~~
35 ~~foreign other business entity shall comply with Section~~
36 ~~16902.~~

37 ~~(b) If the partnership is converting into a foreign other~~
38 ~~business entity, then the conversion proceedings shall be~~
39 ~~in accordance with the laws of the state or place of~~
40 ~~organization of the foreign other business entity and the~~

~~conversion shall become effective in accordance with that law.~~

~~(e) (1) Unless a statement of conversion has been filed to effect the conversion, the converted foreign other business entity shall promptly notify the Secretary of State of the mailing address of its agent for service of process, its chief executive office, and of any change of address. To enforce an obligation of a partnership that has converted to a foreign other business entity, the Secretary of State shall only be the agent for service of process in an action or proceeding against the converted foreign other business entity, if the agent designated for the service of process for the entity is a natural person and cannot be found with due diligence or if the agent is a corporation and no person, to whom delivery may be made, can be found with due diligence, or if no agent has been designated and if no one of the officers, partners, managers, members, or agents of the entity can be found after diligent search, and it is so shown by affidavit to the satisfaction of the court. The court then may make an order that service be made by personal delivery to the Secretary of State or to an assistant or deputy secretary of state of two copies of the process together with two copies of the order, and the order shall set forth an address to which the process shall be sent by the Secretary of State. Service in this manner is deemed complete on the 10th day after delivery of the process to the Secretary of State.~~

~~(2) Upon receipt of the process and order and the fee set forth in Section 12206 of the Government Code, the Secretary of State shall give notice to the entity of the service of the process by forwarding by certified mail, return receipt requested, a copy of the process and order to the address specified in the order.~~

~~(3) The Secretary of State shall keep a record of all process served upon the Secretary of State and shall record therein the time of service and the Secretary of State's action with respect thereto. The certificate of the Secretary of State, under the Secretary of State's official seal, certifying to the receipt of process, the giving of notice thereof to the entity, and the forwarding of the~~

1 ~~process, shall be competent and prima facie evidence of~~
2 ~~the matters stated therein.~~

3 ~~SEC. 33. Section 16911 of the Corporations Code is~~
4 ~~amended to read:~~

5 ~~16911. (a) Each partnership and other business~~
6 ~~entity which desires to merge shall approve an~~
7 ~~agreement of merger. The agreement of merger shall be~~
8 ~~approved by the number or percentage of partners~~
9 ~~specified for merger in the partnership agreement of the~~
10 ~~constituent partnership. If the partnership agreement~~
11 ~~fails to specify the required partner approval for merger~~
12 ~~of the constituent partnership, then the agreement of~~
13 ~~merger shall be approved by that number or percentage~~
14 ~~of partners specified by the partnership agreement to~~
15 ~~approve an amendment to the partnership agreement.~~
16 ~~However, if the merger effects a change for which the~~
17 ~~partnership agreement requires a greater number or~~
18 ~~percentage of partners than that required to amend the~~
19 ~~partnership agreement, then the merger shall be~~
20 ~~approved by that greater number or percentage. If the~~
21 ~~partnership agreement contains no provision specifying~~
22 ~~the vote required to amend the partnership agreement,~~
23 ~~then the agreement of merger must be approved by all~~
24 ~~the partners. The agreement of merger shall be approved~~
25 ~~on behalf of each constituent other business entity by~~
26 ~~those persons required to approve the merger by the laws~~
27 ~~under which it is organized. Other persons may be parties~~
28 ~~to the agreement of merger. The agreement of merger~~
29 ~~shall state all of the following:~~

30 ~~(1) The terms and conditions of the merger.~~

31 ~~(2) The name and place of organization of the~~
32 ~~surviving partnership or surviving other business entity,~~
33 ~~and of each disappearing partnership and disappearing~~
34 ~~other business entity, and the agreement of merger may~~
35 ~~change the name of the surviving partnership, which new~~
36 ~~name may be the same as or similar to the name of a~~
37 ~~disappearing partnership.~~

38 ~~(3) The manner of converting the partnership~~
39 ~~interests of each of the constituent partnerships into~~
40 ~~interests or other securities of the surviving partnership~~

1 ~~or surviving other business entity, and if partnership~~
2 ~~interests of any of the constituent partnerships are not to~~
3 ~~be converted solely into interest or other securities of the~~
4 ~~surviving partnership or surviving other business entity,~~
5 ~~the cash, property, rights, interests, or securities which~~
6 ~~the holders of the partnership interest are to receive in~~
7 ~~exchange for the partnership interests, which cash,~~
8 ~~property, rights, interests, or securities may be in addition~~
9 ~~to or in lieu of interests of other securities of the surviving~~
10 ~~partnership or surviving other business entity, or that the~~
11 ~~partnership interests are canceled without consideration.~~

12 ~~(4) Any other details or provisions as are required by~~
13 ~~the laws under which any constituent other business~~
14 ~~entity is organized.~~

15 ~~(5) Any other details or provisions that are desired,~~
16 ~~including, without limitation, a provision for the~~
17 ~~treatment of fractional partnership interests.~~

18 ~~(b) If the partnership is merging into a limited~~
19 ~~partnership, then in addition to the approval of the~~
20 ~~partners as set forth under subdivision (a), the agreement~~
21 ~~of merger must be approved by all partners who will~~
22 ~~become general partners of the surviving limited~~
23 ~~partnership upon the effectiveness of the merger.~~

24 ~~(c) Notwithstanding its prior approval, an agreement~~
25 ~~of merger may be amended before the merger takes~~
26 ~~effect if the amendment is approved by the partners of~~
27 ~~each constituent partnership, in the same manner as~~
28 ~~required for approval of the original agreement of~~
29 ~~merger, and by each of the constituent other business~~
30 ~~entities.~~

31 ~~(d) The partners of a constituent partnership may in~~
32 ~~their discretion, abandon a merger, subject to the~~
33 ~~contractual rights, if any, of third parties, including other~~
34 ~~constituent partnerships and constituent other business~~
35 ~~entities, if the abandonment is approved by the partners~~
36 ~~of the constituent partnership in the same manner as~~
37 ~~required for approval of the original agreement of~~
38 ~~merger.~~

39 ~~(e) An agreement of merger approved in accordance~~
40 ~~with subdivision (a) may (1) effect any amendment to~~

~~the partnership agreement of any domestic constituent partnership or (2) effect the adoption of a new partnership agreement for a domestic constituent partnership if it is the surviving partnership in the merger. Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger.~~

~~(f) The surviving partnership or surviving other business entity shall keep the agreement of merger at the principal place of business of the surviving entity if the surviving entity is a partnership or a foreign other business entity, at the office referred to in Section 1500 if the surviving entity is a domestic corporation, at the office referred to in subdivision (a) of Section 15614 if the surviving entity is a domestic limited partnership, or at the office referred to in Section 17057 if the surviving entity is a domestic limited liability company and, upon the request of a partner of a constituent partnership or a holder of interests or other securities of a constituent other business entity, the authorized person on behalf of the partnership or the surviving other business entity shall promptly deliver to the partner or the holder of interests or other securities, at the expense of the surviving partnership or surviving other business entity, a copy of the agreement of merger. A waiver by a partner or holder of interests or other securities of the rights provided in this subdivision shall be unenforceable.~~

~~SEC. 34. Section 16914 of the Corporations Code is amended to read:~~

~~16914. (a) When a merger takes effect, all of the following apply:~~

~~(1) The separate existence of the disappearing partnerships and disappearing other business entities ceases and the surviving partnership or surviving other business entity shall succeed, without other transfer, act, or deed, to all the rights and property whether real, personal, or mixed, of each of the disappearing partnerships and disappearing other business entities and shall be subject to all the debts and liabilities of each in the~~

~~1 same manner as if the surviving partnership or surviving
2 other business entity had itself incurred them.~~

~~3 (2) All rights of creditors and all liens upon the
4 property of each of the constituent partnerships and
5 constituent other business entities shall be preserved
6 unimpaired and may be enforced against the surviving
7 partnership or the surviving other business entity to the
8 same extent as if the debt, liability, or duty that gave rise
9 to that lien had been incurred or contracted by it,
10 provided that the liens upon the property of a
11 disappearing partnership or disappearing other business
12 entity shall be limited to the property affected thereby
13 immediately prior to the time the merger is effective.~~

~~14 (3) Any action or proceeding pending by or against
15 any disappearing partnership or disappearing other
16 business entity may be prosecuted to judgment, which
17 shall bind the surviving partnership or surviving other
18 business entity, or the surviving partnership or surviving
19 other business entity may be proceeded against or be
20 substituted in the disappearing partnership's or the
21 disappearing other business entity's place.~~

~~22 (b) (1) Unless a certificate of merger has been filed to
23 effect the merger, the surviving entity shall promptly
24 notify the Secretary of State of the mailing address of its
25 agent for service of process, its chief executive office, and
26 of any change of address. To enforce an obligation of a
27 limited partnership that has merged with a foreign entity,
28 the Secretary of State shall only be the agent for service
29 of process in an action or proceeding against the surviving
30 foreign other business entity, if the agent designated for
31 the service of process for the entity is a natural person and
32 cannot be found with due diligence or if the agent is a
33 corporation and no person, to whom delivery may be
34 made, can be found with due diligence, or if no agent has
35 been designated and if no one of the officers, partners,
36 managers, members, or agents of the entity can be found
37 after diligent search, and it is so shown by affidavit to the
38 satisfaction of the court. The court then may make an
39 order that service be made by personal delivery to the
40 Secretary of State or to an assistant or deputy secretary of~~

1 ~~state of two copies of the process together with two copies~~
2 ~~of the order, and the order shall set forth an address to~~
3 ~~which the process shall be sent by the Secretary of State.~~
4 ~~Service in this manner is deemed complete on the 10th~~
5 ~~day after delivery of the process to the Secretary of State.~~

6 ~~(2) Upon receipt of the process and order and the fee~~
7 ~~set forth in Section 12206 of the Government Code, the~~
8 ~~Secretary of State shall give notice to the entity of the~~
9 ~~service of the process by forwarding by certified mail,~~
10 ~~return receipt requested, a copy of the process and order~~
11 ~~to the address specified in the order.~~

12 ~~(3) The Secretary of State shall keep a record of all~~
13 ~~process served upon the Secretary of State and shall~~
14 ~~record therein the time of service and the Secretary of~~
15 ~~State's action with respect thereto. The certificate of the~~
16 ~~Secretary of State, under the Secretary of State's official~~
17 ~~seal, certifying to the receipt of process, the giving of~~
18 ~~notice thereof to the entity, and the forwarding of the~~
19 ~~process, shall be competent and prima facie evidence of~~
20 ~~the matters stated therein.~~

21 ~~(c) A partner of the surviving partnership or surviving~~
22 ~~limited partnership, a member of the surviving limited~~
23 ~~liability company, a shareholder of the surviving~~
24 ~~corporation, or a holder of equity securities of the~~
25 ~~surviving other business entity is liable for all of the~~
26 ~~following:~~

27 ~~(1) All obligations of a party to the merger for which~~
28 ~~that person was personally liable before the merger.~~

29 ~~(2) All other obligations of the surviving entity~~
30 ~~incurred before the merger by a party to the merger, but~~
31 ~~those obligations may be satisfied only out of property of~~
32 ~~the entity.~~

33 ~~(3) All obligations of the surviving entity incurred~~
34 ~~after the merger takes effect, but those obligations may~~
35 ~~be satisfied only out of property of the entity if that person~~
36 ~~is a limited partner, a shareholder in a corporation or,~~
37 ~~unless expressly provided otherwise in the articles of~~
38 ~~organization or other constituent documents, a member~~
39 ~~of a limited liability company or a holder of equity~~
40 ~~securities in a surviving other business entity.~~

1 ~~(d) If the obligations incurred before the merger by a~~
2 ~~party to the merger are not satisfied out of the property~~
3 ~~of the surviving partnership or surviving other business~~
4 ~~entity, the general partners of that party immediately~~
5 ~~before the effective date of the merger, to the extent such~~
6 ~~party was a partnership or a limited partnership, shall~~
7 ~~contribute the amount necessary to satisfy that party's~~
8 ~~obligations to the surviving entity, in the manner~~
9 ~~provided in Section 16807 or in the limited partnership~~
10 ~~act of the jurisdiction in which the party was formed, as~~
11 ~~the case may be, as if the merged party were dissolved.~~

12 ~~(e) A partner of a domestic disappearing partnership,~~
13 ~~who does not vote in favor of the merger and does not~~
14 ~~agree to become a partner, member, shareholder or~~
15 ~~holder of interest or equity securities of the surviving~~
16 ~~partnership or surviving other business entity shall have~~
17 ~~the right to dissociate from the partnership, as of the date~~
18 ~~the merger takes effect. Within 10 days after the approval~~
19 ~~of the merger by the partners as required under this~~
20 ~~article, each domestic disappearing partnership shall~~
21 ~~send notice of the approval of the merger to each partner~~
22 ~~that has not approved the merger, accompanied by a~~
23 ~~copy of Section 16701 and a brief description of the~~
24 ~~procedure to be followed under that section if the partner~~
25 ~~wishes to dissociate from the partnership. A partner that~~
26 ~~desires to dissociate from a disappearing partnership shall~~
27 ~~send written notice of such dissociation within 30 days~~
28 ~~after the date of the notice of the approval of the merger.~~
29 ~~The disappearing partnership shall cause the partner's~~
30 ~~interest in the entity to be purchased under Section~~
31 ~~16701. The surviving entity is bound under Section 16702~~
32 ~~by an act of a general partner dissociated under this~~
33 ~~subdivision, and the partner is liable under Section 16703~~
34 ~~for transactions entered into by the surviving entity after~~
35 ~~the merger takes effect. The disassociation of a partner in~~
36 ~~connection with a merger pursuant to the terms of this~~
37 ~~subdivision shall not be deemed a wrongful disassociation~~
38 ~~under Section 16602.~~

39 ~~SEC. 35. Section 16915 of the Corporations Code is~~
40 ~~amended to read:~~

1 ~~16915. (a) In a merger involving only partnerships,~~
2 ~~or in a merger to which a domestic partnership and an~~
3 ~~other business entity is a party but in which no other~~
4 ~~domestic other business entity is a party, the surviving~~
5 ~~partnership or surviving foreign other business entity~~
6 ~~may file with the Secretary of State a statement that one~~
7 ~~or more partnerships have merged into the surviving~~
8 ~~partnership or surviving other business entity. A~~
9 ~~statement of merger shall contain the following:~~

10 ~~(1) The name of each partnership or other business~~
11 ~~entity that is a party to the merger.~~

12 ~~(2) The name of the surviving entity into which the~~
13 ~~other partnerships or other business entities where~~
14 ~~merged.~~

15 ~~(3) The street address of the surviving entity's chief~~
16 ~~executive office and of an office in this state, if any.~~

17 ~~(4) Whether the surviving entity is a partnership or an~~
18 ~~other business entity, specifying the type of the entity.~~

19 ~~(b) In a merger involving a domestic partnership in~~
20 ~~which a domestic other business entity is also a party, after~~
21 ~~approval of the merger by the constituent partnerships~~
22 ~~and any constituent other business entities, the~~
23 ~~constituent partnerships and constituent other business~~
24 ~~entities shall file a certificate of merger in the office of and~~
25 ~~on a form prescribed by, the Secretary of State, but if the~~
26 ~~surviving entity is a domestic corporation or a foreign~~
27 ~~corporation in a merger in which a domestic corporation~~
28 ~~is a constituent party, the surviving corporation shall file~~
29 ~~in the office of the Secretary of State a copy of the~~
30 ~~agreement of merger and attachments required under~~
31 ~~paragraph (1) of subdivision (g) of Section 1113. The~~
32 ~~certificate of merger shall be executed and~~
33 ~~acknowledged by each domestic constituent partnership~~
34 ~~by two partners (unless a lesser number is provided in the~~
35 ~~partnership agreement) and by each foreign constituent~~
36 ~~partnership by one or more partners, and by each~~
37 ~~constituent other business entity by those persons~~
38 ~~required to execute the certificate of merger by the laws~~
39 ~~under which the constituent other business entity is~~

1 organized. The certificate of merger shall set forth all of
2 the following:

3 (1) The names and the Secretary of State's file
4 numbers, if any, of each of the constituent partnerships
5 and constituent other business entities, separately
6 identifying the disappearing partnerships and
7 disappearing other business entities and the surviving
8 partnership or surviving other business entity.

9 (2) If a vote of the partners was required under
10 Section 16911, a statement that the principal terms of the
11 agreement of merger were approved by a vote of the
12 partners, which equaled or exceeded the vote required.

13 (3) If the surviving entity is a domestic partnership
14 and not an other business entity, any change to the
15 information set forth in any filed statement of partnership
16 authority of the surviving partnership resulting from the
17 merger, including any change in the name of the
18 surviving partnership resulting from the merger. The
19 filing of a certificate of merger setting forth any changes
20 to any filed statement of partnership authority of the
21 surviving partnership shall have the effect of the filing of
22 a certificate of amendment of the statement of
23 partnership authority by the surviving partnership, and
24 the surviving partnership need not file a certificate of
25 amendment under Section 16015 to reflect those changes.

26 (4) The future effective date or time (which shall be
27 a date or time certain not more than 90 days subsequent
28 to the date of filing) of the merger, if the merger is not
29 to be effective upon the filing of the certificate of merger
30 with the office of the Secretary of State.

31 (5) If the surviving entity is an other business entity or
32 a foreign partnership, the full name, type of entity, legal
33 jurisdiction in which the entity was organized and by
34 whose laws its internal affairs are governed, and the
35 address of the principal place of business of the entity.

36 (6) Any other information required to be stated in the
37 certificate of merger by the laws under which each
38 constituent other business entity is organized.

39 (c) A statement of merger or a certificate of merger,
40 as is applicable under subdivision (a) or (b), shall have

1 ~~the effect of the filing of a cancellation for each~~
2 ~~disappearing partnership of any statement of partnership~~
3 ~~authority filed by it.~~

4 ~~SEC. 36. Section 16916 of the Corporations Code is~~
5 ~~amended to read:~~

6 ~~16916. (a) Whenever a domestic or foreign~~
7 ~~partnership or other business entity having any real~~
8 ~~property in this state merges with another partnership or~~
9 ~~other business entity pursuant to the laws of this state or~~
10 ~~of the state or place in which any constituent partnership~~
11 ~~or constituent other business entity was organized, and~~
12 ~~the laws of the state or place of organization (including~~
13 ~~this state) of any disappearing partnership or~~
14 ~~disappearing other business entity provide substantially~~
15 ~~that the making and filing of a statement of merger,~~
16 ~~agreement of merger, or certificate of merger vests in the~~
17 ~~surviving partnership or surviving other business entity~~
18 ~~all the real property of any disappearing partnership and~~
19 ~~disappearing other business entity, the filing for record in~~
20 ~~the office of the county record of any county in this state~~
21 ~~in which any of the real property of the disappearing~~
22 ~~partnership or disappearing other business entity is~~
23 ~~located of either (1) a certificate of merger or agreement~~
24 ~~of merger certified by the Secretary of State, or other~~
25 ~~certificate prescribed by the Secretary of State, or (2) a~~
26 ~~copy of the statement of merger, agreement of merger,~~
27 ~~or certificate of merger, certified by the Secretary of State~~
28 ~~or an authorized public official of the state or place~~
29 ~~pursuant to the laws of which the merger is effected, shall~~
30 ~~evidence record ownership in the surviving partnership~~
31 ~~or surviving other business entity of all interest of such~~
32 ~~disappearing partnership or disappearing other business~~
33 ~~entity in and to the real property located in that county.~~

34 ~~(b) A filed and, if appropriate, recorded statement of~~
35 ~~merger, executed and declared to be accurate pursuant~~
36 ~~to subdivision (e) of Section 16105, stating the name of a~~
37 ~~partnership or other business entity that is a party to the~~
38 ~~merger in whose name property was held before the~~
39 ~~merger and the name of the surviving entity, but not~~
40 ~~containing all of the other information required by~~

~~Section 16915, operates with respect to the partnerships or other business entities named to the extent provided in subdivision (a):~~

~~(e) Recording of the certificate of merger in accordance with subdivision (a) shall create, in favor of bona fide purchasers or encumbrancers for value, a conclusive presumption that the merger was validly completed.~~

~~SEC. 37. Chapter 11.5 (commencing with Section 17540.1) is added to Title 2.5 of the Corporations Code, to read:~~

~~CHAPTER 11.5. CONVERSION~~

~~17540.1. For purposes of this chapter, the following definitions shall apply:~~

~~(a) "Converted entity" means the other business entity or foreign limited liability company that results from a conversion of a domestic limited liability company under this chapter.~~

~~(b) "Converted limited liability company" means a domestic limited liability company that results from a conversion of an other business entity or a foreign limited liability company pursuant to the provisions of Section 17540.8.~~

~~(c) "Converting limited liability company" means a domestic limited liability company that converts to an other business entity or a foreign limited liability company pursuant to this chapter.~~

~~(d) "Converting entity" means an other business entity or foreign limited liability company that converts to a domestic limited liability company pursuant to the terms of Section 17540.8.~~

~~17540.2. A limited liability company may be converted into a domestic or foreign other business entity or a foreign limited liability company pursuant to this chapter if, pursuant to the proposed conversion, each of the members of the converting limited liability company would receive a percentage interest in profits and capital of the converted entity equal to that member's~~

1 ~~percentage interest in profits and capital of the~~
2 ~~converting limited liability company as of the effective~~
3 ~~time of the conversion. Notwithstanding this section, the~~
4 ~~conversion of a limited liability company to an other~~
5 ~~business entity or a foreign limited liability company may~~
6 ~~be effected only if both of the following are met:~~

7 ~~(a) The law under which the converted entity will~~
8 ~~exist expressly permits the formation of the other entity~~
9 ~~pursuant to a conversion.~~

10 ~~(b) The limited liability company complies with any~~
11 ~~and all other requirements of any other law that applies~~
12 ~~to conversion of the converted entity.~~

13 ~~17540.3. (a) A limited liability company that desires~~
14 ~~to convert to an other business entity or a foreign limited~~
15 ~~liability company shall approve a plan of conversion. The~~
16 ~~plan of conversion shall state all of the following:~~

17 ~~(1) The terms and conditions of the conversion.~~

18 ~~(2) The place of the organization of the converted~~
19 ~~entity and of the converting limited liability company~~
20 ~~and the name of the converted entity after conversion.~~

21 ~~(3) The manner of converting the membership~~
22 ~~interests of each of the members into securities of, or~~
23 ~~interests in, the converted entity.~~

24 ~~(4) The provisions of the governing documents for the~~
25 ~~converted entity, such as a partnership agreement, to~~
26 ~~which the holders of interests in the converted entity are~~
27 ~~to be bound.~~

28 ~~(5) Any other details or provisions that are required by~~
29 ~~the laws under which the converted entity is organized,~~
30 ~~or that are desired by the parties.~~

31 ~~(b) The plan of conversion shall be approved by a vote~~
32 ~~of a majority in interest of the members of the converting~~
33 ~~limited liability company, or a greater percentage of the~~
34 ~~voting interests of members as may be specified in the~~
35 ~~articles of organization or written operating agreement~~
36 ~~of the converting limited liability company.~~
37 ~~Notwithstanding the previous sentence, if the members~~
38 ~~of the limited liability company would become personally~~
39 ~~liable for any obligations of the converted entity as a~~
40 ~~result of the conversion, the plan of conversion shall be~~

1 approved by all of the members of the converting limited
2 liability company, unless the plan of conversion provides
3 that all members will have the dissenters' rights as
4 provided in Chapter 13 (commencing with Section
5 17600).

6 (e) If the limited liability company is converting into
7 a limited partnership, then in addition to the approval of
8 the members set forth in subdivision (b), the plan of
9 conversion shall be approved by those members who will
10 become general partners of the converted limited
11 partnership pursuant to the plan of conversion.

12 (d) Upon effectiveness of the conversion, all members
13 of the converting limited liability company except those
14 that exercise dissenters' rights as provided in Chapter 13
15 (commencing with Section 17600) shall be deemed
16 parties to any governing documents for the converted
17 entity adopted as part of the plan of conversion,
18 regardless whether a member has executed the plan of
19 conversion or such governing documents for the
20 converted entity. Any adoption of governing documents
21 made pursuant to the foregoing sentence shall be
22 effective at the effective time or date of the conversion.

23 (e) Notwithstanding its prior approval, a plan of
24 conversion may be amended before the conversion takes
25 effect if the amendment is approved by the members of
26 the converting limited liability company in the same
27 manner as was required for approval of the original plan
28 of conversion.

29 (f) A plan of conversion may be abandoned by the
30 members of a converting limited liability company in the
31 manner as required for approval of the plan of
32 conversion, subject to the contractual rights of third
33 parties, at any time before the conversion is effective.

34 (g) The converted entity shall keep the plan of
35 conversion at the principal place of business of the
36 converted entity if the converted entity is a domestic
37 partnership or foreign other business entity or at the
38 office at which records are to be kept under Section 15614
39 if the converted entity is a domestic limited partnership.
40 Upon the request of a member of a converting limited

1 ~~liability company, the authorized person on behalf of the~~
2 ~~converted entity shall promptly deliver to the member or~~
3 ~~the holder of interests or other securities, at the expense~~
4 ~~of the converted entity, a copy of the plan of conversion.~~
5 ~~A waiver by a member of the rights provided in this~~
6 ~~subdivision shall be unenforceable.~~

7 ~~17540.4. (a) A conversion into an other business~~
8 ~~entity or a foreign limited liability company shall become~~
9 ~~effective upon the earliest date that all of the following~~
10 ~~shall have occurred:~~

11 ~~(1) The approval of the plan of conversion by the~~
12 ~~members of the converting limited liability company as~~
13 ~~provided in Section 17540.3.~~

14 ~~(2) The filing of all documents required by law to~~
15 ~~effect the conversion and create the converted entity,~~
16 ~~which documents shall also contain a statement of~~
17 ~~conversion, if required under Section 17540.6.~~

18 ~~(3) The effective date, if set forth in the plan of~~
19 ~~conversion, shall have occurred.~~

20 ~~(b) A copy of the statement of partnership authority~~
21 ~~or certificate of limited partnership complying with~~
22 ~~Section 17540.6, if applicable, duly certified by the~~
23 ~~Secretary of State, is conclusive evidence of the~~
24 ~~conversion of the limited liability company.~~

25 ~~17540.5. (a) The conversion of a limited liability~~
26 ~~company into a foreign other business entity or a foreign~~
27 ~~limited liability company shall be required to comply~~
28 ~~with Section 17540.2.~~

29 ~~(b) If the limited liability company is converting into~~
30 ~~a foreign other business entity or a foreign limited liability~~
31 ~~company, then the conversion proceedings shall be in~~
32 ~~accordance with the laws of the state or place of~~
33 ~~organization of the foreign other business entity or~~
34 ~~foreign limited liability company and the conversion shall~~
35 ~~become effective in accordance with that law.~~

36 ~~(c) (1) To enforce an obligation of a limited liability~~
37 ~~company that has converted to a foreign other business~~
38 ~~entity, the Secretary of State shall only be the agent for~~
39 ~~service of process in an action or proceeding against the~~
40 ~~converted foreign other business entity, if the agent~~

~~1 designated for the service of process for the entity is a
2 natural person and cannot be found with due diligence or
3 if the agent is a corporation and no person, to whom
4 delivery may be made, can be found with due diligence,
5 or if no agent has been designated and if no one of the
6 officers, partners, managers, members, or agents of the
7 entity can be found after diligent search, and it is so shown
8 by affidavit to the satisfaction of the court. The court then
9 may make an order that service be made by personal
10 delivery to the Secretary of State or to an assistant or
11 deputy secretary of state of two copies of the process
12 together with two copies of the order, and the order shall
13 set forth an address to which the process shall be sent by
14 the Secretary of State. Service in this manner is deemed
15 complete on the 10th day after delivery of the process to
16 the Secretary of State.~~

~~17 (2) Upon receipt of the process and order and the fee
18 set forth in Section 12206 of the Government Code, the
19 Secretary of State shall give notice to the entity of the
20 service of the process by forwarding by certified mail,
21 return receipt requested, a copy of the process and order
22 to the address specified in the order.~~

~~23 (3) The Secretary of State shall keep a record of all
24 process served upon the Secretary of State and shall
25 record therein the time of service and the Secretary of
26 State's action with respect thereto. The certificate of the
27 Secretary of State, under the Secretary of State's official
28 seal, certifying to the receipt of process, the giving of
29 notice thereof to the entity, and the forwarding of the
30 process, shall be competent and prima facie evidence of
31 the matters stated therein.~~

~~32 17540.6. (a) Upon conversion of a limited liability
33 company: (1) if the limited liability company is
34 converting into a domestic limited partnership, a
35 statement of conversion shall be completed on the
36 certificate of limited partnership for the converted
37 entity; (2) if the limited liability company is converting
38 into a domestic partnership, a statement of conversion
39 shall be completed on the statement of partnership
40 authority for the converted entity, or if no statement of~~

~~partnership authority is filed then a certificate of conversion shall be filed separately; and (3) if the limited liability company is converting into a foreign limited liability company or foreign other business entity, a certificate of conversion shall be filed with the Secretary of State. Any statement or certificate of conversion shall be executed and acknowledged by all of the managers, unless a lesser number is provided in the articles of organization or the operating agreement of the converting limited liability company, and shall set forth all of the following:~~

~~(A) The name and the Secretary of State's file number of the converting limited liability company.~~

~~(B) A statement that the principal terms of the plan of conversion were approved by a vote of the members, which equaled or exceeded the vote required under Section 17540.3, specifying each class entitled to vote and the percentage vote required of each class.~~

~~(C) The form of organization of the converted entity.~~

~~(b) The filing with the Secretary of State of a certificate of conversion or an organizational document containing a statement of conversion shall have the effect of the filing of a certificate of cancellation by the converting limited liability company and no converting limited liability company that has made such a filing need file a certificate of dissolution or a certificate of cancellation under Section 17356 as a result of the conversion.~~

~~17540.7. (a) Whenever a limited liability company or other business entity having any real property in this state converts into a limited liability company or an other business entity pursuant to the laws of this state or of the state or place in which the converted entity was organized, and the laws of the state or place of organization, including this state, of the converting limited liability company or other business entity provide substantially that the conversion of a converting entity vests in the converted entity all the real property of the converting limited liability company or converting other business entity, the filing for record in the office of the~~

1 county recorder of any county in this state in which any
2 of the real property of the converting limited liability
3 company or converting other business entity is located of
4 either (1) a certificate of conversion, statement of
5 partnership authority, certificate of limited partnership,
6 or articles of organization complying with Section
7 17540.6, in the form prescribed and certified by the
8 Secretary of State, or (2) a copy of a certificate of
9 conversion, statement of partnership authority,
10 certificate of limited partnership or articles of
11 organization containing a statement of conversion, or
12 other certificate evidencing the creation of a foreign
13 other business entity by conversion, certified by the
14 Secretary of State or an authorized public official of the
15 state or place pursuant to the laws of which the
16 conversion is effected, shall evidence record ownership
17 in the converted limited liability company or converted
18 entity of all interest of the converting limited liability
19 company or converting other business entity in and to the
20 real property located in that county.

21 (b) A filed and, if appropriate, recorded certificate of
22 conversion, or a statement of partnership authority,
23 certificate of limited partnership or articles of
24 organization or other certificate evidencing the
25 formation of a foreign other business entity or a foreign
26 limited liability company filed pursuant to Section 17540.6
27 containing a statement of conversion, stating the name of
28 the converting limited liability company or converting
29 other business entity in whose name property was held
30 before the conversion and the name of the converted
31 entity, but not containing all of the other information
32 required by Section 17540.6, operates with respect to the
33 converted entities named to the extent provided in
34 subdivision (a):

35 (c) Recording of a certificate of conversion or a
36 statement of partnership authority, certificate of limited
37 partnership or articles of organization containing a
38 statement of conversion, or other certificate evidencing
39 the creation of an other business entity by conversion, in
40 accordance with subdivision (a) shall create, in favor of

1 ~~bona fide purchasers or encumbrances for value, a~~
2 ~~conclusive presumption that the conversion was validly~~
3 ~~completed.~~

4 ~~17540.8. (a) A domestic partnership or limited~~
5 ~~partnership or a foreign other business entity or foreign~~
6 ~~limited liability company may be converted to a domestic~~
7 ~~limited liability company pursuant to this chapter, but~~
8 ~~only if the converting entity is not prohibited by the law~~
9 ~~under which it is organized to effect the conversion.~~

10 ~~(b) An entity that desires to convert into a domestic~~
11 ~~limited liability company shall approve a plan of~~
12 ~~conversion or such instrument as is required to be~~
13 ~~approved to effect the conversion pursuant to the laws~~
14 ~~under which the entity is organized.~~

15 ~~(c) The conversion of a domestic partnership or~~
16 ~~limited partnership or foreign other business entity shall~~
17 ~~be approved by that number or percentage of the~~
18 ~~partners, members, or holders of interest of the~~
19 ~~converting entity as is required by the law under which~~
20 ~~the entity is organized, or greater percentage or lesser~~
21 ~~percentage, subject to applicable laws, as set forth in the~~
22 ~~partnership agreement or other governing document~~
23 ~~evidencing the creation of an other business entity or~~
24 ~~foreign limited liability company by conversion in~~
25 ~~accordance with subdivision (a).~~

26 ~~(d) The conversion by a domestic partnership or~~
27 ~~limited partnership or a foreign other business entity or~~
28 ~~foreign domestic limited liability company shall be~~
29 ~~effective under this chapter at the time the conversion is~~
30 ~~effective under the law under which the converting~~
31 ~~entity is organized as long as the articles of organization~~
32 ~~have been filed with the Secretary of State. If the~~
33 ~~converting entity's governing law is silent as to~~
34 ~~effectiveness of conversion, then the conversion shall be~~
35 ~~effective upon the completion of all acts required under~~
36 ~~this title to form a limited liability company.~~

37 ~~17540.9. (a) An entity that converts into another~~
38 ~~entity pursuant to this chapter is for all purposes the same~~
39 ~~entity that existed before the conversion.~~

~~(b) When a conversion takes effect, all of the following apply:~~

~~(1) All the rights and property, whether real, personal, or mixed, of the converting entity remains vested in the converted entity.~~

~~(2) All debts, liabilities, and obligations of the converting entity continue as debts, liabilities, and obligations of the converted entity.~~

~~(3) All rights of creditors and liens upon the property of the converting entity shall be preserved unimpaired and remain enforceable against the converted entity to the same extent as against the converting entity as if the conversion had not occurred.~~

~~(4) Any action or proceeding pending by or against the converting entity may be continued against the converted entity as if the conversion had not occurred.~~

~~(e) A member of a converting limited liability company is liable for:~~

~~(1) All obligations of the converting limited liability company for which the member was personally liable before the conversion.~~

~~(2) All obligations of the converted entity incurred after the conversion takes effect, but those obligations may be satisfied only out of property of the entity if the converted entity is a limited partnership or foreign limited liability company and the member becomes a limited partner of the limited partnership or a member of the foreign limited liability company.~~

~~(d) A member of a limited liability company that converted from an other business entity or a foreign limited liability company remains liable for any and all obligations of the converting other business entity or foreign limited liability company for which the member was personally liable before the conversion, but only to the extent that the member was personally liable for the obligations of the converting other business entity or foreign limited liability company prior to the conversion.~~

~~SEC. 38. Section 17600 of the Corporations Code is amended to read:~~

1 17600. (a) For purposes of this chapter,
2 “reorganization” refers to any of the following:

3 (1) A conversion pursuant to Chapter 11.5
4 (commencing with Section 17540.1).

5 (2) A merger pursuant to Chapter 12 (commencing
6 with Section 17550).

7 (3) The acquisition by one limited liability company,
8 in exchange, in whole or part, for its membership
9 interests (or the membership interests or equity
10 securities of a limited liability company or other business
11 entity that is in control of the acquiring limited liability
12 company), of membership interests or equity securities
13 of another limited liability company or other business
14 entity if, immediately after the acquisition, the acquiring
15 limited liability company has control of the other limited
16 liability company or other business entity.

17 (4) The acquisition by one limited liability company in
18 exchange, in whole or in part, for its membership
19 interests (or the membership interests or equity
20 securities of a limited liability company or other business
21 entity that is in control of the acquiring limited liability
22 company) or for its debt securities (or debt securities of
23 a limited liability company or other business entity that
24 is in control of the acquiring limited liability company)
25 that are not adequately secured and that have a maturity
26 date in excess of five years after the consummation of the
27 acquisition, or both, of all or substantially all of the assets
28 of another limited liability company or other business
29 entity.

30 (b) For purposes of this chapter, “control” means the
31 possession, direct or indirect, of the power to direct or
32 cause the direction of the management and policies of a
33 limited liability company or other business entity.

34 ~~SEC. 39.~~

35 *SEC. 3.* Section 29 of Chapter 57 of the Statutes of 1996
36 is amended to read:

37 Sec. 29. Existing business entities, such as
38 partnerships and corporations, shall be permitted to
39 convert into or transfer real property to, limited liability
40 companies without incurring a documentary transfer tax

1 ~~or a change in ownership for purposes of property taxes,,~~
2 provided that the direct or indirect proportionate
3 interests in the property remain the same.

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